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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No.

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PATRICK G. MARTONE,

Appellant,

versus

CECYL MORGAN, WILLIAM REDMANN, ANDREW P. TUGWELL, J. B. LANCASTER, and JOHN JULIEN McKEITHEN,

Appellees.

Appeal from the Supreme Court of the State of Louisiana.

STATEMENT AS TO JURISDICTION.

J. MINOS SIMON,
1408 Pinhook Road,
Post Office Box 52116, OCS,
Lafayette, Louisiana,
Attorney for Appellant.

Franklin Printing Company, Inc. • 209 Magazine St. • New Orleans • 522-9654

INDEX

	Page
STATEMENT AS TO JURISDICTION	1
OPINION BELOW	2
JURISDICTION	2
QUESTION PRESENTED	3
STATEMENT OF THE CASE	4
THE QUESTIONS PRESENTED ARE SUBSTANTIAL	11
ACT PATENTLY UNCONSTITUTIONAL	15
THE ACTS AND DEEDS OF STATE OFFICIALS DEPRIVE APPELLANT OF HIS CONSTITUTIONAL LIBERTIES	24
DISMISSAL OF APPELLANT'S LAWSUIT DENIES CONSTITUTIONAL LIBERTY	25
PROOF OF SERVICE	28

APPENDIX

A — Louisiana Supreme Court Opinion	a-1
B — Act No. 2 of the 1967 First Extraordinary Session of the Louisiana Legislature	b-1
B — Appellant's Original Petition	b-19
B — Appellant's Supplemental Petition	b-38
C — Judge Blanche's Reasons for Judgment	c-1
C — Judgment of State District Court	c-10
D — Appellant's Application for Rehearing to the Louisiana Supreme Court	d-1

AUTHORITIES CITED

	Page
Basista v. Weir, 340 F. 2d 74	25
Beauharnais v. People of the State of Illinois (1952), 343 U.S. 250, 72 S. Ct. 725, rehearing denied, 72 S. Ct. 1070, 343 U.S. 988	3, 25
Birnbaum v. Trussell, 371 F. 2d 672	25
Brazier v. Cherry, 293 F. 2d 400	25
Brown v. Brown, 368 F. 2d 992	25
Cancino v. Sanchez, 379 F. 2d 808	25
Cohen v. Norris, 300 F. 2d 24	25
Coleman v. Johnson, 247 F. 2d 273	25
Connerly v. General Construction Co. (1926), 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322	15
Cooper, et al v. Aaron, et al (1958), 358 U.S. 1, 78 S. Ct. 1401	2, 25
DeWitt v. Pail, 366 F. 2d 682	25
Elkins v. United States, 364 U.S. 206 (1960)	3
Escobedo v. Illinois, 378 U.S. 478 (1964)	3
Gideon v. Wainwright, 372 U.S. 335 (1963)	3
Greene v. McElroy (1959), 360 U.S. 474, 79 S. Ct. 1400	2, 22, 24
Hague v. CIO, 310 U.S. 496, 59 S. Ct. 954	25
Hannah v. Larch, 363 U.S. 420, 4 L. Ed. 1307, 80 S. Ct. 1502	10, 19, 20, 23
Hughes v. Noble, 395 F. 2d 495	25
Jenks v. Henys, 378 F. 2d 335	25
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 71 S. Ct. 624	2, 22, 23, 24
Malloy v. Hogan, 378 U.S. 1 (1964)	3

AUTHORITIES CITED—(Continued)

	Page
Mapp v. Ohio, 378 U.S. 1 (1961)	3
Miranda v. Arizona, 384 U.S. 436 (1966)	3
Monroe v. Pape, 81 S. Ct. 473	25
Morgan v. Labiak, 368 F. 2d 338	25
Morgan v. United States, 304 U.S. 1, 58 S. Ct. 773	2, 24
N.A.A.C.P. v. Button, et al (1963) 371 U.S. 415, 83 S. Ct. 328	3, 25
Nesmith v. Alford, 318 F. 2d 110	25
O'Connell v. United States, 140 F. 2d 201 (2d Cir. 1930)	3
Open Hearing Investigation, 245 La. 1059, 162 So. 2d 565	10, 11
Pyle v. Kansas, 317 U.S. 213, 63 S. Ct. 177	25
Ridge Park, Inc. v. Police Jury of Jefferson Parish, 210 La. 351, 27 So. 2d 128, 129	26
Rivers v. Royster, 360 F. 2d 592	25
Cf. Rogers v. United States, 346 U.S. 367 (1951)	3
Saunders v. Shaw, 244 U.S. 317, 37 S. Ct. 638	3
Shushan v. United States, 117 F. 2d 110 (1941)	3
Smith v. Hampton Training School for Nurses, 360 F. 2d 577	25
State of Louisiana, ex rel., Butcher's Union and Slaughter House and Live Stock Landing Co. v. The Judge of the Civil District Court of New Orleans, Division E, 33 La. Ann. 436, 437	26

AUTHORITIES CITED—(Continued)

	Page
State of Missouri, ex rel., Gaines v. Canada, et al (1938), 305 U.S. 337, 59 S. Ct. 232	2, 25
United States v. Morton Salt, 338 U.S. 632 (1950)	3
United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031	25
United States, ex rel., Potts v. Rabb, 141 F. 2d 45	25
Valle v. Stingel, 176 F. 2d 697	25

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No.

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Appellees.

Appeal from the Supreme Court of the State of Louisiana.

STATEMENT AS TO JURISDICTION.

The appellant, pursuant to United States Supreme Court Rules 13(2) and 15, files this statement of the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment of the Louisiana Supreme Court, in dismissing appellant's petition, and should exercise such jurisdiction in this case.

OPINION BELOW

The reasons and judgment of the Louisiana Supreme Court were finally entered on March 25, 1968. A copy of the opinion is attached hereto as Appendix A, *infra*, P. 1a. This decision has not been reported.

JURISDICTION

This appeal is from a final judgment entered by the Louisiana Supreme Court, dismissing appellant's lawsuit which prayed for a preliminary and permanent injunction against the enforcement of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967. Because this State Statute is lengthy its text is reproduced and attached hereto as Appendix B, *infra*, P. 1b. It is reported in West's Louisiana Revised Statutes Annotated, Volume 16, Page 9 of the 1967 Cumulative Annual Pocket Part, officially cited as R.S. 23:880.1-880.18. Appellant's petition alleges that the statute as a matter of law and as administered deny him privileges and immunities as a citizen of the United States, due process and equal protection of the laws, guaranteed by the Fourteenth Amendment to the United States Constitution.

The action was dismissed by final order dated March 25, 1968. Notice of appeal was filed June 10, 1968.

This court has jurisdiction on direct appeal to review said judgment below under 28 U.S.C. 1257(2) and 2101(c), and the following decisions sustain that jurisdiction: *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S. Ct. 624; *Greene v. McElroy* (1959), 360 U.S. 474, 79 S. Ct. 1400; *Morgan v. United States*, 304 U.S. 1, 58 S. Ct. 773; *Cooper, et al. v. Aaron, et al.*, 358 U.S. 1, 78 S. Ct. 1401; *State of Missouri, ex rel. Gaines v.*

Canada, et al., 305 U.S. 337, 59 S. Ct. 232; *Beauharnais v. People of the State of Illinois*, 343 U.S. 250, 72 S. Ct. 725; *N.A.A.C.P. v. Button, et al.*, 371 U.S. 415, 83 S. Ct. 328; *Saunders v. Shaw*, 244 U.S. 317, 37 S. Ct. 638; *United States v. Morton Salt*, 338 U.S. 632 (1950); *Elkins v. United States*, 364 U.S. 206 (1960); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Mapp v. Ohio*, 378 U.S. 1 (1961); *Cf. Rogers v. United States*, 346 U.S. 367 (1951); *Malloy v. Hogan*, 378 U.S. 1 (1964); *O'Connell v. United States*, 140 F. 2d 201 (2d. Cir. 1930); *Shushan v. United States*, 117 F. 2d 110 (1941).

QUESTIONS PRESENTED

1. Is a state statute valid, which by its terms creates an executive trial agency, whose sole function is to conduct public hearings for the purpose of making "findings" (a) that state or federal crimes have been committed, and (b) that named individuals are guilty of the commission of such crimes; which "findings" must be "publicized", as part of a criminal process, where persons suspected or called as witnesses are denied (1) the right to examine or cross-examine any witness who may testify for or against him, (2) the right to the effective assistance of counsel, (3) the right of confrontation, (4) the right to compulsory process for the attendance of witnesses, (5) the right to effective and meaningful rules of evidence, (6) the right to meaningful and definable standards of guilt or innocence and (7) the right of appeal?

2. Do the acts and deeds of state officials in willfully applying the provisions of said state statute in a discriminatory manner against appellant and members of a labor union, for the sole purpose of destroying said labor union and discrediting its members, deprive appellant and

those similarly situated of constitutional due process and equal protection of laws guaranteed by the Fourteenth Amendment to the United States Constitution?

3. Is the dismissal of appellant's lawsuit by the Louisiana Supreme Court a denial of constitutional due process and equal protection of state laws, guaranteed by the Fourteenth Amendment, where appellant's lawsuit presented for that court's consideration only the validity of an interlocutory judgment?

STATEMENT OF THE CASE

The legal issues on this appeal are framed by the pleadings of appellant's lawsuit filed in the Nineteenth Judicial District Court at Baton Rouge, Louisiana. In his lawsuit appellant charges that the state statute in controversy, as a matter of law and as administered, deprives him of privileges and immunities as a citizen of the United States, of due process and equal protection of laws, guaranteed by the Fourteenth Amendment to the United States Constitution. The burden of his complaint is that the state statute creates an executive trial agency, known as the Labor-Management Commission of Inquiry. Its sole function is to conduct public hearings in the field of labor-management relations for the purpose of making "findings" concerning the existence of state or federal crimes and to identify the individuals who are guilty of the commission of such crimes. Under the terms of said statute these "findings" of guilt of law violations must be publicized. After this state agency has found named persons guilty of having committed crimes, and after such "findings" have been duly "publicized", it then becomes the mandatory duty of said state agency to "report its findings and recommendations to the proper federal and state authorities, or either of them, **charged with the responsibility**

for prosecution of criminal offenses." In addition, when directed to do so by the Commission, "the **Chairman** shall file appropriate charges with the state and federal authorities having jurisdiction." Section 880.7(b). Thus the public hearing, the findings of guilt, and the publicizing of these findings are part of the criminal process.

Appellant further charges in his petition that a person subpoenaed before this trial agency as a potential accused or as a witness is denied the right to the effective assistance of counsel, to examine and cross-examine the witnesses against him, to compulsory process for the attendance of witnesses in his behalf, to the benefit of effective and meaningful rules of evidence and to the benefit of meaningful and definable standards of guilt or innocence. Thus he is denied the rudiments of constitutional due process and equal protection of laws.

Appellant further charges in his lawsuit that the sole purpose for which the Labor-Management Commission of Inquiry was created was to be used as an instrument of the state "to scandalize and injure your petitioner, Edward Grady Partin and members of Teamsters Local Union No. 5 of East Baton Rouge Parish, Louisiana and persons, firms and organizations doing business with or otherwise associated with said persons or Union." He charges that the officers, agents, employees and representatives of said state agency by their acts and deeds have applied the provisions of said state statute discriminatorily and illegally against him and members of said labor union. As to him he specifically charges that by the process of duress, intimidation and corrupt practices, including promises of immunities and things of value, these state officials have extracted from third parties knowingly false incriminatory statements. Specifically he charges that these state officials fraudulently induced two named individuals to make and

subscribe to false statements involving him and other members of the labor union in criminal activities antedating the creation of the state agency by some three to four years and obtained such knowingly false statements by actually delivering to the parties subscribing to the false statement the sum of Two Hundred Fifty ($250.00) Dollars in cash plus a 1962 Ford automobile and a grant of immunity from criminal prosecution. He alleges that said state officials knowingly used said fraudulent statements as a basis to bring about his indictment for criminal law violation.

Based upon these substantial averments, as contained in his lawsuit, (reproduced in Appendix B at P. b-19) he prayed for a temporary restraining order, a preliminary injunction and a final injunction against the enforcement of the state statute because of its constitutional invalidity. His application for a temporary restraining order was denied. In due course a hearing as to his application for a preliminary injunction was conducted. This hearing, however, was limited only to the question of whether or not the state statute in question as a matter of law was unconstitutional. The questions of fact raised by his pleadings were not considered.

On January 5, 1968, Honorable Fred A. Blanche, Jr., State District Judge, to whom the question of the preliminary injunction was submitted, held that the state statute indeed was unconstitutional in that it violated appellant's rights as secured to him by the Fourteenth Amendment to the United States Constitution.

In analyzing the state statute in question in his reasons for judgment Judge Blanche observed that: (this opinion is reproduced in Appendix C at P. 1c)

> "* * * the statute is concerned with the taking of testimony and receiving evidence in a public

hearing by the Commission to determine if a crime has been committed and to determine the parties responsible for having committed said crime. In other words, there is conducted an open hearing where certain persons will be accused of a crime in public and such persons are without the constitutional safeguards to face their accusers. This is much different from Grand Jury investigations where the proceedings are conducted in secrecy and an accusation made. Thereafter the accused has his day in court with all 'due process' safeguards. Under this system one could only fairly exonerate himself from an accusation thus made by demanding and insisting that he be tried by the appropriate authorities on the charges made by such persons against him. Under the rules of the Commission, the accused has no real opportunity to explain away the charges made against him. In other words, by the safeguards the plaintiff seeks, he might well use the forum for subjecting the charges against him to a scrutiny that might disprove them or, at least, establish that they were incompatible with innocent conduct. Nor can there be any doubt but that the Commission will pass official judgment on individuals whom they have under scrutiny, particularly in view of the specific language in 880.7-a concerning the publicizing of findings and conclusions as to specific individuals.

"Stated differently, there is no doubt that, although denominated a fact-finding and investigatory agency, the Commission is charged with making **findings** with respect to actual or probable violations of criminal laws and in fact may either file appropriate charges with the authorities (880.7-b) or request the Governor to ask the Attorney General to cause criminal prosecutions to be initiated (880.7-d). It also appears that an accusatory function is involved, and on the basis of the hearings thus far held, that the Commission has become in fact a forum for the litigation of individual culpability

and that official incriminatory and defamatory judgments on individuals will be a necessary concommitant of the hearings. This is, of course, aggravated by the fact that the Commission's members and employees are immune from suit (880.16) and that the right of rebuttal testimony and subpoena power is largely discretionary with the Commission. (880.12)

* * * * *

"Certainly it is my personal feeling that the procedure here at issue can only lead to 'effective trial' by executive agencies and legislative committees to the prejudice of the ultimate trial itself and puts in the hands of the executive branch power historically vested in judges, grand juries, district attorneys and local police officials. Effective use of these historical agencies could go far in eliminating any adverse effect this decision might have.

* * * * *

"What we have here is more than an agency whose sole purpose of existence 'is to find facts which may subsequently be used as the basis for legislative or executive action' (Hannah), more than an inquiry 'to pursue a legislative policy of fire prevention through the discovery of the origins of fires [rather than adjudicate individual responsibility for the fire]' *(Re Gorban,* 352 U.S. 330, 1 L. Ed. 376, 77 S. Ct. 510), and more than a general inquiry into powers before it 'not as potential accused but solely as witnesses' *(Anonymous Nos. 6 & 7 v. Baker,* 360 U.S. 287, 3 L. Ed. 2d 1234, 79 S. Ct. 1157). Rather, we have here an agency which makes determinations in the nature of adjudications affecting legal rights *(Morgan v. U.S.,* 304 U.S. 1, 82 L. Ed. 1129, 58 S. Ct. 773; *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 95 L. Ed. 817, 71 S. Ct. 624; and, *Greene v. McElroy,* 360 U.S. 474, 3 L. Ed. 2d 1377, 79 S. Ct.

> 1400). Its duty in large part is to find that named individuals are responsible for criminal actions and to **advertise** (publicize) such findings and serve as part of the process of criminal prosecution. (See Justice Frankfurter's concurring opinion, *Hannah*, 4 L. Ed. 2d 1307, 1353)"

On January 9, 1968, a written judgment for a preliminary injunction was granted to appellant. On the same date defendants appealed that judgment to the Louisiana Supreme Court. The Louisiana Supreme Court granted defendants' request for special assignment and consequently the appeal was heard on January 18, 1968. On February 20, 1968 the judgment appealed from was reversed and appellant's lawsuit was dismissed. In reversing, the Louisiana Supreme Court held that the Louisiana Constitution guarantees the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses only in criminal proceedings. Said the court:

> "Furthermore, the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses are guaranteed only by Section 9 of Article 1 of our Constitution to an accused in a criminal prosecution. * * *"

Furthermore, the State Supreme Court held that as a matter of constitutional law the right to be free from a formal accusation of criminal law violation, the right to privacy, to personal dignity and good repute, where there is no right of redress, are not to be included in the catalog of personal rights falling under the protective aegis of the Fourteenth Amendment. On this score the Louisiana Supreme Court said:

> "Surely it cannot be said that persons investigated by the Commission, **who are found factually**

> **to have violated any criminal law,** are deprived of either life or liberty or property by such finding. * * *"

Despite the fact that the sole purpose for which public hearings are conducted by the state agency in controversy is to make "findings" as to both state and federal law violations, to find that named individuals are guilty of criminal law violations, thereafter to "publicize" such "findings" of guilt, and then to report such "findings" to "the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses," or to have its chairman file criminal charges against such individuals, the Louisiana Supreme Court held that the majority decision of this court in *Hannah v. Larch*, 363 U.S. 420, 4 L. Ed. 2d 1307, 80 S. Ct. 1502, was dispositive of the constitutional question raised by appellant.

Despite the fact that defendants' appeal presented to the Louisiana Supreme Court the determination of the validity of an interlocutory judgment, that state court dismissed appellant's lawsuit as though there had been a trial on the merits, contrary to the provisions of state law in such cases applicable.

In his application for rehearing (reproduced in Appendix D at P. 1d) appellant pointed out, among other things, that the State Supreme Court had overlooked the essential justiciable controversy presented by the appeal as to the operative effect of the state statute on appellant's constitutional liberty, that the court committed error in holding that the Commission of Inquiry did not have power to institute formal criminal accusation, that its decision was contrary to its previous decision in OPEN HEARING INVESTIGATION, 245 La. 1059, 162 So. 2d

565; that it committed error in holding that the purpose of the state statute was to enable the Legislature to enact new laws, especially where such a purpose is expressly proscribed by Section 880.6(d) of the statute, and that it was error for the court to dismiss appellant's lawsuit where the appeal presented only the validity of an interlocutory judgment. This application for rehearing was denied on March 25, 1968, without the assignment of any reason whatever and thus the opinion and decision of the Louisiana State Supreme Court became final.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The offensive nature and over-reaching quality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967 (R. S. 23:880.1 - 880.18) can be accurately appraised only if the nature and function of the Commission of Inquiry which it creates are subjected to close scrutiny. The structure of its power is a good beginning point.

The Commission of Inquiry is an executive trial agency. Its powers of inquiry are to be exercised only on an ad hoc basis, Section 880.1, and then only when, in the opinion of the Governor alone, that power should be exercised. Section 880.5. Thus the reins of control are vested exclusively in the already powerful hands of the Governor of the State of Louisiana and the standards of judgment by which he is to be guided in unleashing the consummate power of depredation inherent in the Commission are so vague and indefinite as to offer no legally definable guidelines whatever, with the result that the Governor thereby is invested with arbitrary and capricious powers to injure and damage or praise and compliment accordingly as his whim may induce him to act.

The Commission of Inquiry consists of nine (9) members appointed by the Governor. Section 880.1. Moreover the Governor appoints the chairman and vice-chairman. Section 880.2. A majority of five (5) controls. Section 880.4.

All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the State and of the political subdivisions of the State are mobilized and impressed into cooperative service with the Commission to the end of effectuating its function and duties by the provisions of 880.6(d). Moreover, on the simple request of the Governor the entire investigatory forces of the Commission of Inquiry are assignable to the State Police and during that assignment the assignees "have all the power and authority of other members of the State Police". Section 880.6(c). Thus all the power and might of the State of Louisiana are harnessed to the executive juggernaut.

This great arsenal of power is concentrated in a narrow functional chamber aimed at conducting public trials concerning criminal law violations. Significantly the Commission of Inquiry does not conduct inquiry which is related to or in furtherance of a legitimate task of the Legislature. In fact it does not report to the Legislature. **It is not a fact-finding agency** of the Legislature or even of the Executive, such as permissibly may be created for the purpose of gathering facts to be used by the Legislature or the Executive in formulating **remedial legislation.** To the contrary it is **prohibited** from doing this forasmuch as it is powerless to "hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of labor problems or disputes". Section

880.6(b)[1]. It is an executive trial agency which receives evidence to ascertain the existence of "facts surrounding or pertinent to * * * * any actual or probable violations of the criminal laws of this State or of the United States which relate to, arise out of or are connected with problems or disputes in the field of labor-management relation". Section 880.6(a).

After conducting its investigations and hearings, it is the **mandatory duty** of this Commission to make findings of fact limited to two (2) objectives: (a) the violations of any criminal law or laws of the United States or of the State of Louisiana, and (b) the guilt or innocence of specific individuals as to such criminal law violations. Section 880.7(a). Not only is it the mandatory duty of the Com-

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[1]B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of any labor problem or dispute but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matter which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lock-out or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters or (4) any alleged acts of violence or threats of violence or so-called "mass picketing", or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute", as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

mission to make such "findings" but the Commission must "publicize" these "findings". Additionally no such "findings" can be made and "publicized" unless it is preceded by a "public hearing". Section 880.7(a). Thus the legislative intent to "publicly" condemn is unmistakably clear. After the Commission has made public "findings" that certain citizens are criminals it then becomes its mandatory duty to "report its findings and recommendations to the proper federal and state authorities, or either of them, **charged with the responsibility for prosecution of criminal offenses.**" In addition, when directed to do so by the Commission, "the **chairman** shall file appropriate charges with the state and federal authorities having jurisdiction. Section 880.7(b).

This Commission is empowered to adopt rules and regulations controlling its function, to employ necessary personnel, to administer oaths, to issue subpoenas for the personal appearance of witnesses and for the production of books and to take depositions anywhere in the United States. Section 880.8. Subpoenas may be served by anyone designated by the Commission and the Commission may apply to the courts to compel attendance of witnesses and it is empowered to compel obedience to its will by instituting contempt proceedings. Section 880.9.

Arrayed against such an ominous police structure is your appellant and persons similarly situated. One called as a witness may be a potential suspect. Nevertheless neither prosecuting witness nor victim has a right to examine or cross-examine any witness who may testify for or against him.[2] There is no right to the effective assistance of counsel,[3] no right of confrontation, no right to compul-

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[2]Section 880.10 (b) expressly provides that:
"*In no event* shall counsel for any witness have any right to examine or cross-examine any other witness * * *."

[3]While Section 880.10(b) grants to a witness the right to be ac-

sory process for the attendance of witnesses. There are no effective and meaningful rules of evidence, no meaningful and definable standards of guilt or innocence and no right of appeal.

The Commission may receive any type evidence, hearsay or otherwise. Furthermore no matter how willful, how malicious, how irresponsible the conduct of the employees, agents, representatives and officials of the Commission may be, and no matter how grave the resultant injury, by virtue of the provisions of Section 880.16 the doors of all the courts of Louisiana are shut against its victims for redress of grievances, including injury to person and reputation. Such is the nature and function of the Commission of Inquiry created by Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967.

ACT PATENTLY UNCONSTITUTIONAL

The validity of the provision of any statute must be tested not by its labels or title but on the basis of the terms employed. *Connerly v. General Construction Co.*, (1926) 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322. The terms employed by the Act under consideration unmistakably characterize and empower the Commission of Inquiry as an accusatory body charged with the exclusive responsibility of finding the existence of criminal law violations and of naming individuals who are guilty of these criminal violations. That is its raison d'etre. It can function only under the glare of public view. While it has power to hold execu-

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companied by counsel, who may advise him, such right to counsel is made wholly ineffective, because counsel's act of advising the witness of his rights is "subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing". In fact the insistence of counsel on his advocacy itself may be construed as disorderly behavior toward the commission and thus subject counsel to a contempt citation, pursuant to the provisions of 880.0(b) (2).

tive hearings, evidence adduced during such hearings cannot form the basis of its "findings". Such evidence must be heard anew in open hearings before it can be considered by the Commission in making its "findings". Section 880.12(a). In effect, therefore, the Commission's sole function is to conduct what is tantamount to a preliminary hearing as used in the federal criminal law system or a preliminary examination as used in the state criminal law system. Moreover while the incriminating and defamatory evidence is being heard, television cameras are grinding away and representatives of the news media are ever present collecting the evidence, sensationalizing it and subsequently disseminating it throughout the State and even to the far reaches of the nation with the result that the entire population of the State sits as a jury to determine the guilt or innocence of the accused. In such a context the guilty verdict of the Commission is almost anti-climactic. Nevertheless the accused stands formally adjudged a criminal. He is thereby forever stigmatized with all of the horrendous consequences of that stigma.

His prior good reputation in the community is reduced to rubbish. He is now a pariah, to be shunned. He is an object of derision. His wife, his children, his parents and his relatives must share his shame. A bearing of self-respect and personal dignity now is publicly judged as morbid arrogance or personal depravity. The stigma is like a communicable disease. Those who associate with him will contract the stigma. He is no longer a suitable candidate for employment. Prudent employers dare not risk contracting the disease which infects him. Thus he suffers a great impairment of employment opportunities.

He has arrived at this disasterous station in life not because he is guilty of any wrongdoing. His abysmally servile and scandalous status exists because the State of Loui-

siana has deprived him of the opportunity to defend himself, to show the falsity of the dastardly charges made against him. He stands thus injured because in the face of the calumny which engulfs him he was not granted the right to confront his accusers, to have the effective assistance of counsel, to examine and cross-examine the witnesses against him, to bring witnesses to testify on his behalf. He was assassinated by weapons rejected as rank contrabands by all civilized societies, namely, opinion evidence, innuendos, and hearsay testimony, because no effective and meaningful rules of evidence were applied to control the scope and nature of the evidence against him. His guilt was based on no meaningful and definable standards of guilt or innocence, and thus was the product of caprice and whim. In short he is the victim of a classic Inquisition, an ugly recrudescence of the infamous days of Salem.

Standing thus denuded of personal dignity, defamed in good repute and denied of inalienable rights, he is without meaningful recourse or effective redress. Those officials who have plundered him are immune from civil liability by the very statute which authorized the slaughter. Those whose damaging hearsay evidence scandalized him enjoy the protective shield of quasi-privilege, because they were compelled by the duress of contempt punishment to respond to questions which expressly elicited such hearsay evidence. There is only one possible way out. The gods that be may prevail upon the Chairman of the Commission of Inquiry to administer the coup de grace, i.e., to file criminal charges against him as he is authorized to do by Section 880.7 (b), so that finally the accused may have the opportunity to defend himself, to confront his accusers, to examine and cross-examine them, to bring witnesses to testify on his behalf, to cull the evidence against him by the employment of meaningful rules of evidence and to have his guilt or innocence determined by meaningful and

definable standards. In this manner he stands the chance of being vindicated, of being exonerated, if only he can find a judge or jury who can still impartially evaluate the evidence against him. Should the Chairman of the Commission not be possessed of the charity to administer the coup de grace, then he may still approach the state or federal district attorney on bended knees and beg to be criminally prosecuted so that thereby he may have the opportunity to be exonerated, to wash off the contamination of the stigma and erase his eroded image from the public mind, if that is still possible. In other words he must invite the ignominy of a public trial, the further scourge of criminality and the financial burden of a defense for the opportunity to prove his innocence, to unring the bell of degradation sounded against him, to attempt to right a wrong that is constitutionally impermissible.

Thus by the plain terms of this statute the Commission of Inquiry of Louisiana conducts public trials concerning the existence of crimes and the guilt or innocence of persons in relation to those crimes. Furthermore this public body determines the criminal liability of persons whom it may find are so involved. Moreover such a determination or "finding" of criminal liability must be made public. Additionally these findings of necessity contain a defamatory content. The only authority which this State agency lacks is the power to impose a fine or sentence the guilty person to a term of imprisonment. The lack of that power, however, does not make the adjudication or determination less binding. Nothing is more binding and everlastingly so nor more consummately injurious than a public condemnation formally pronounced after a public hearing by a State agency whose solo mission is to make such a determination.

The apocryphal claim that the state Commission is

nothing but an innocent fact-finding agency such as was involved in *Hannah v. Larche* (1960), 363 U.S. 420, 80 S. Ct. 1502, is supported neither by the terms of the state statute in controversy nor by the decision in HANNAH.

There is a marked difference between what is permitted in HANNAH and what is licensed in the instant case. For example, as the court observed in HANNAH, "potentially defamatory, degrading, or incriminating testimony shall be received in **executive session,** and that any person defamed, degraded, or incriminated by such testimony shall have an opportunity to appear voluntarily as a witness and to **request the commission to subpoena additional witnesses;** that testimony taken in executive session shall be released **only upon the consent of the commission".** (80 S. Ct. at P. 1509). The very contrary is true as to the function of the Commission of Inquiry. For example the Commission deals **only in incriminating testimony. Nothing** heard in executive session may be considered by it in making its findings. Its findings are based **entirely** on incriminating evidence and its findings can relate to **nothing but incriminating testimony.** Of necessity its findings embrace a defamatory content. Further its incriminatory and defamatory findings must be **publicized.** The ultimate objective of the Commission function is to deliver these incriminatory findings to a state or federal authority charged with the responsibility of pursuing criminal prosecutions or to permit and direct its Chairman to institute such criminal prosecution. This is a far cry from the Commission function in HANNAH. In fact in his concurring opinion Justice Frankfurter states that if the function of the Commission in HANNAH were equivalent to that of the Commission of Inquiry involved in the instant case, the decision would be the reverse of what it was. Said Justice Frankfurter (80 S. Ct. at P. 1543):

> "Were the Commission exercising an **accusatory function,** were its duty to find that **named individuals were responsible** for wrongful deprivation of voting rights and to **advertise** such finding or to serve as **part of the process of criminal prosecution,** the rigorous protections relevant to criminal prosecutions might well be the controlling starting point for assessing the protection which the Commission's procedure provides."

This is precisely what the State Commission of Inquiry is. It exercises (a) an accusatory function, (b) its duty is to find that named individuals are responsible for criminal violations, (c) it must advertise such finding, and (d) its finding serves as part of the process of criminal prosecution. Thus all four conditions which Justice Frankfurter stated would demand the rigorous protections relevant to criminal prosecutions exist and concur in connection with the function of the Commission of Inquiry. This simply means that under the HANNAH decision the state statute is unconstitutional. As Justice Frankfurter observed the objectives and the function of the Commission on Civil Rights involved in HANNAH were completely opposite these involved in the instant case. Following his comments as quoted above Justice Frankfurter continued: (80 S. Ct. at P. 1543)

> "The objectives of the Commission on Civil Rights, the purpose of its creation, and its true functioning are quite otherwise. It is not charged with official judgment on individuals nor are its inquiries so directed. The purpose of its investigations is to develop facts upon which legislation may be based. As such, its investigations are directed to those concerns that are the normal impulse to legislation and the basis for it. To impose upon the Commission's investigations the safeguards appropriate

> to inquiries into individual blame-worthiness would be to divert and frustrate its purpose * * *."

The sole purpose of the State Labor-Management Commission of Inquiry is to make a finding of criminal law violations and an official judgment on individuals guilty of them. These judgments have but one function and that is to condemn and stigmatize individuals. Furthermore these judgments are preliminaries to and a part of the process of criminal prosecution. In such a situation all of the constitutional safeguards appropriate to criminal prosecution must be accorded these individuals. Justice Frankfurter so stated in his concurring opinion in HANNAH:

> "In appraising the constitutionally permissive investigative procedures claimed to subject individuals to incrimination or defamation without adequate opportunity for defense, a relevant distinction exists between those proceedings which are preliminaries to official judgments on individuals and those, like the investigation of this Commission, charged with responsibility to gather information as a solid foundation for legislative action. Judgments by the Commission condemning or stigmatizing individuals are not called for. **When official pronouncements on individuals purport to rest on evidence and investigation, it is right to demand that those so accused be given a full opportunity for their defense in such investigation, excepting, of course, grand jury investigations."**

In its opinion the Louisiana Supreme Court pointed to the disclaimer in the state statute that the state agency had no authority to make binding adjudication and urged this as a magic formula of immunity against the practical effects of the incriminatory and defamatory judgments

against individuals, which the state agency is duty-bound to make.

It is immaterial for the purpose of the resultant irreparable injury to the individual, that the "findings" of the Commission do not rise to the dignity of legalistic or binding "adjudication". The fact of the "findings" is the same. These "findings" declare a status. They are official pronouncements on individuals. They condemn; they stigmatize; they maim; and they cripple. The resultant injury is real, immediate and incalculable. As Justice Frankfurter said in his concurring opinion in *Joint Anti-Fascist Refugee Committee v. McGrath*, (1951) 341 U.S. 123, 71 S. Ct. 624, in connection with an identical argument: (71 S. Ct. at P. 650)

> "Nor does he obtain immunity on the ground that designation is not an 'adjudication' or a 'regulation' in the conventional use of those terms. **Due process is not confined in its scope to the particular forms in which rights have heretofore been found to have been curtailed for want of procedural fairness.** Due process is perhaps the most majestic concept in our whole constitutional system. While it contains the garnered wisdom of the past in assuring fundamental justice, it is also a living principle not confined to past instances."

The rights of individuals appearing before the Commission have been curtailed for want of procedural fairness and whether the form of the juggernaut which tramples these rights is that of "adjudication", "regulation" or "findings" the proscription of due process applies. In such a context the State statute's repugnance to elementary constitutional strictures is transcendent. *Greene v. McElroy* (1959), 360 U.S. 474, 79 S. Ct. 1400; *Joint Anti-Fascist Refugee Committee v. McGrath, supra.*

In HANNAH the court expressly held that the com-

mission in question did "not hold trials or determine anyone's civil or criminal liability". The Commission under the State law however does in fact hold trials. Moreover it holds public trials. The Commission furthermore determines the criminal liability of persons appearing before it and otherwise. In HANNAH the Court held that the commission did not "indict". But the Commission under the State law has the authority to effect the equivalent of an indictment. It is expressly authorized, through its Chairman, to file criminal charges against individuals. Thus it accuses, which is what an indictment does. In HANNAH the Court held that the commission "does not make determinations depriving anyone of his life, liberty or property". The Louisiana Commission however does make such determinations. Its determination that an individual is guilty of crime denies one of his legal right to be free from defamation, a property right recognized by the Court in *Joint Anti-Fascist Refugee Committee v. McGrath, supra.* And as the court said in HANNAH,

> "Thus, when governmental agencies adjudicate **or** make binding determinations which directly affect legal rights of individuals, **it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process."**

A contextual evaluation of the statute in question leaves no room for doubt that the consequence of being adjudged or found guilty of criminal law violations, of being deprived of the right to be free from defamation, is neither conjectural nor incidental to the hearings of the Commission. Such consequences are the **sole** objectives of the hearings. The public pronouncement of such adjudication or findings is the **sole** reason for which the Commission exists; it is the **sole** purpose for which it functions. The Commission of Inquiry of Louisiana has no other legiti-

mate purpose than to make such adjudications. And in the constitutional context of due process, such findings are just as binding and just as much an adjudication as was the Attorney General's "designation" of subversion, found by the Court to be constitutional adjudication in *Joint Anti-Fascist Refugee Committee v. McGrath, supra;* just as much an adjudication as was the fixing of minimum rates by the Secretary of Agriculture in *Morgan v. United States,* 304 U.S. 1, 58 S. Ct. 773; and just as much of an adjudication as was the Security Clearance findings in *Greene v. McElroy, supra.*

Thus the State statute in question, for the multiple reasons heretofore mentioned, obviously is constitutionally null and void.

THE ACTS AND DEEDS OF STATE OFFICIALS DEPRIVE APPELLANT OF HIS CONSTITUTIONAL LIBERTIES

Salient aspects of appellant's original and supplemental petitions establish that defendants, in their official capacities as state officials, conspired together and acted in concert with others willfully and purposefully to deny and have denied to and deprived appellant and those similarly situated of their rights, privileges and immunities secured to them by the United States Constitution, including by way of illustration the right to (a) the equal benefits and protections of state laws, (b) the privilege not to be falsely accused of crime, (c) impartial justice, (d) the right not to be wrongfully prosecuted on the basis of false charges of criminal law violations, (e) the right to privacy, (f) the right to live in peace and dignity, free of false and malicious accusations, (g) the right to a good reputation and not unjustly and wrongly to be defamed and degraded, (h) the right not to have a pall of shame and public oblo-

quy engulf him, his parents, his relatives and friends, and (i) the right to earn a living and belong to a labor union without impairment to job opportunities. Such state actions give rise to substantial federal questions. *Cooper, et al., v. Aaron, et al.*, (1958), 358 U.S. 1, 78 S. Ct. 1401; *State of Missouri, ex rel., Gaines v. Canada, et al.* (1938), 305 U.S. 337, 59 S. Ct. 232; *Monroe v. Pape*, 81 S. Ct. 473; *United States v. Classic*, 313 U.S. 299, 61 S. Ct. 1031; *Pyle v. Kansas*, 317 U.S. 213, 63 S. Ct. 177; *Hague v. CIO*, 307 U.S. 496, 59 S. Ct. 954; *Birnbaum v. Trussell*, 371 F. 2d 672; *Basista v. Weir*, 340 F. 2d 74; *Nesmith v. Alford*, 318 F. 2d 110; *Cohen v. Norris*, 300 F. 2d 24; *Hughes v. Noble*, 395 F. 2d 495; *Brazier v. Cherry*, 293 F. 2d 400; *Coleman v. Johnson*, 247 F. 2d 273; *United States, ex rel, Potts v. Rabb*, 141 F. 2d 45; *Valle v. Stingel*, 176 F. 2d 697; *Cancino v. Sanchez*, 379 F. 2d 808; *Jenks v. Henys*, 378 F. 2d 335; *Brown v. Brown*, 368 F. 2d 992; *Morgan v. Labiak*, 368 F. 2d 338; *DeWitt v. Pail*, 366 F. 2d 682; *Smith v. Hampton Training School for Nurses*, 360 F. 2d 577; *Rivers v. Royster*, 360 F. 2d 592.

Furthermore the right to belong to a labor union is one secured to appellant by the First and Fourteenth Amendments to the United States Constitution and thus cannot be taken without complying with the rigorous demands of the due process and equal protection clause of the Fourteenth Amendment. *Beauharnais v. People of the State of Illinois* (1952), 343 U.S. 250, 72 S. Ct. 725, rehearing denied 72 S. Ct. 1070, 343 U.S. 988; *N.A.A.C.P. v. Button, et al.* (1963) 371 U.S. 415, 83 S. Ct. 328.

DISMISSAL OF APPELLANT'S LAWSUIT DENIES CONSTITUTIONAL LIBERTY

Only the validity of an interlocutory judgment was presented by defendants' appeal to the Louisiana Supreme

Court from the granting of a preliminary injunction by the trial court. The hearing in the state district court did not involve a consideration of the merits of the case and particularly of the factual allegations as to the acts and deeds of state officials. Under the law and jurisprudence of the State of Louisiana appellant had a legal right to a trial on the merits of his claim. As early as 1881 in the case of *State of Louisiana, ex rel., Butchers' Union and Slaughter House and Livestock Landing Co. v. The Judge of the Civil District Court of New Orleans, Division E*, 33 La. Ann. 436, 437, the State Supreme Court said:

> "A judgment dissolving a preliminary injunction, on rule and on the face of the papers, is ordinarily a mere interlocutory judgment which does not prevent the cause from proceeding to determination on the merits. The case is not different even where the injunction is the sole relief sought.
>
> "The effect of such a judgment is simply to declare that, on the face of the papers, the plaintiff is not entitled to the injunction."

Again in 1946, in the case of *Ridge Park, Inc. v. Police Jury of Jefferson Parish*, 210 La. 351, 27 So. 2d 128, 129, the Louisiana Supreme Court affirmed this unarguable principle of law. In overturning a trial court judgment which did precisely what the Louisiana Supreme Court did to appellant's lawsuit, it held:

> "Obviously the court was unauthorized to dismiss the plaintiff's suit on the merits since the only matter tendered to the court and submitted to it for adjudication under the rule nisi was 'why a preliminary injunction should not issue in this cause as prayed for.'
>
> * * * * *
>
> "* * * 'It is the approved rule that the granting

or refusing of a preliminary injunction is merely an interlocutory judgment designed to preserve the existing status pending a trial of the issues on the merits of the case.' "

The Louisiana Supreme Court, by virtue of the laws of the State of Louisiana, was without authority to dismiss appellant's lawsuit on the merits as it did. In so doing it has denied appellant a fundamental right of due process and equal protection as guaranteed to him by the Fourteenth Amendment to the United States Constitution. As such its decision must be reversed.

Respectfully submitted,

J. MINOS SIMON,
1408 Pinhook Road,
Post Office Box 52116, OCS,
Lafayette, Louisiana,

Attorney for Appellant.

PROOF OF SERVICE

I, J. Minos Simon, attorney for appellant herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the.....day of June, 1968, I served a copy of the foregoing statement as to jurisdiction on the several parties hereto by mailing said copies in a duly addressed envelope with first class postage prepaid to their attorneys of record, Ashton L. Stewart, Esquire, Special Assistant Attorney General, State of Louisiana, 604 Union Federal Building, Baton Rouge, Louisiana, and Wesley Wirtz, Esquire, Assistant Attorney General, State of Louisiana, State Capitol, Baton Rouge, Louisiana.

Lafayette, Louisiana, this.....day of June, 1968.

J. MINOS SIMON
Attorney for Appellant,
1408 Pinhook Road,
Post Office Box 52116, OCS,
Lafayette, Louisiana 70501.

APPENDIX A

SUPREME COURT OF LOUISIANA

PATRICK G. MARTONE

V.

No. 49,042

CECIL MORGAN, ET AL.

Appeal from the Nineteenth Judicial District Court
Parish of East Baton Rouge
Hon. Fred A. Blanche, Jr., Judge

McCALEB, Justice.

The Legislature of 1967, by Act 2 of the Extraordinary Session thereof (R.S. 23:880.1-880.18), created a commission denominated as the "Labor-Management Commission of Inquiry" to investigate and find facts relating to violations or possible violations of the criminal laws of this State or of the United States arising out of or in connection with matters in the field of Labor-management relations. According to the preamble to the act, this Commission of Inquiry was conceived and created to examine the causes for the unprecedented conditions existing in the State in the field of labor-management relations under which, by reason of suspected violations of the State and Federal criminal laws, there has been a shutdown of construction work involving industrial development projects furnishing employment to thousands of persons; that the present conditions vitally affect the public interest and threaten to disrupt the conduct of normal labor-management relations. It was further stated that, in view of the presently existing conditions, the public interest requires that the causes therof be investigated on a statewide basis

as a supplement to assist activities of the district attorneys, grand juries and other law enforcement officials and agencies of this State and of the United States.

In the body of the act, the Commission is created and invested with power to ascertain the facts surrounding and pertaining to any actual or possible violations of the criminal laws relating to, arising out of or connected with problems or disputes in the field of labor-management relations. This power was limited however, the act declaring, "* * * it shall be investigatory and fact finding only * * *", and it was further provided that "The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; * * *" and "No findings, conclusions, recommendations or reports of the commission may be used as prima facie or presumptive evidence of the guilt or innocence of any person in any court of law." Additionally, the act provides that the Commission "* * * shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law * * *. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature."

After the membership on the Commission had been duly appointed and the body began to function comformably with the authority vested in it, plaintiff instituted the present suit for an injunction as a taxpayer to have the statute declared unconstitutional on various grounds which will hereinafter be set forth and discussed. The principal attack levelled by the plaintiff is that the act denies him due process as guaranteed by Section 2 of Article I of the Louisiana Constitution and the Fourteenth Amendment to the Constitution of the United States, because the powers vested in the Commission are such that, in their investigations and hearings authorized under the act, plaintiff and/

or persons similarly situated are denied assistance of counsel, the right of confrontation, the right of cross-examination of witnesses and the right to compulsory process for their witnesses. The provisions of the act thus assailed have to do with the procedure rules set forth in the act for hearings by the Commission.

This attack was sustained by the district judge and the act declared unconstitutional in its entirety, despite the fact that it contains a severability clause. In accordance with his decision, the judge issued a preliminary injunction enjoining all action by the Commission and also enjoining the expenditure of funds appropriated in the statute. The defendants,[1] however, secured under R.S. 13:4061 and 13:4431 a suspensive appeal to this Court and the matter has been argued and submitted for our decision.

Imprimis, we notice that, although the defendants filed no written pleadings at the hearing on the rule nisi for a preliminary injunction, they have in this Court interposed exceptions of no right of action and no cause of action. We nevertheless pretermit discussion of these exceptions, in view of the conclusion we reach on the merits anent plaintiff's claims that the statute is unconstitutional. Accordingly, we direct our immediate attention to plaintiff's principal attack, and the holding of the trial judge, that R.S. 23:880.1-880.18 denies plaintiff and those similarly situated due process under the State and Federal Constitutions in that it is an agency "* * * which makes determinations in the nature of adjudications affecting legal rights. * * * * Its duty in large part is to find that named individuals are responsible for criminal actions and to *advertise* (publicize) such findings and serve as part of the process of criminal prosecution."

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[1]They are: Cecil Morgan, Chairman of the Commission, William Redmann, Secretary of the Commission, Andrew P. Tugwell, State Treasurer, J. B. Lancaster, State Auditor, and John J. McKeithen, Governor of Louisiana.

This ruling, in our opinion, does not conform with the nature of the statute and the purpose for its enactment, for the Labor-Management Commission of Inquiry is not invested with any power to make adjudications affecting legal rights. On the contrary it is, as its provisions expressly set forth, an administrative commission (R.S. 23:880.1) created for the special purpose of investigating and finding facts in relation to violation of existing criminal laws "* * * affecting in a significant manner labor-management relations in one or more areas of the state * * *" in various construction projects which may, in the opinion of the Governor, operate as a serious threat to the economic well-being of the affected area or the State as a whole (R.S. 23:880.5) By Section 880.6(A) it becomes the duty of the Commission, when called on by the Governor to investigate and hold hearings, to receive testimony and documentary evidence and make findings with respect to any actual or probable violations of criminal laws which relate to the problems or disputes in the field of labor management relations.

Under the provisions of Section 880.7(A), the Commission is required to publicize its findings with respect to the question whether or not there is probable cause to believe that there have been violations of any criminal law arising out of the subject matter of its investigation. But it "* * * shall have no authority to and it shall make no binding adjudication with respect to such violation * * *", however it may make such recommendations to the Governor for action as it deems appropriate, and copies of its report are to be furnished to the Governor, Lieutenant Governor, the Attorney General and the Legislature. Nevertheless its findings, recommendations and conclusions may not be used as prima facie or presumptive evidence of guilt or innocence of any person in any court of law.

It is seen from the foregoing that this administrative

body has no right to adjudicate; it merely finds facts and recommends. Hence, it is difficult to perceive that these limited powers impinge upon any constitutional guarantee to which those being investigated are entitled under the Bill of Rights.

Section 2 of Article I of our Constitution provides in part: "No person shall be deprived of life, liberty or property, except by due process of law." Surely it cannot be said that persons investigated by the Commission, who are found factually to have violated any criminal law, are deprived of either life or liberty or property by such finding. Indeed, the administrative agency is merely an adjunct of the executive and legislative departments reporting, as it does, its findings of facts which may serve these departments with data from which new laws may be enacted, and also assist in the speedier and more effective enforcement of criminal laws in the highly sensitive and specialized field of labor-management relations. In truth, the findings of the Commission simply focus the attention of the prosecuting and executive officers to probable violations which may or may not provide a basis for criminal proceedings. No life, liberty or property are taken and can ever be taken by the investigation and finding, but only after institution of a formal charge and subsequent criminal proceedings clothed with all the safeguards of due process.

Furthermore, the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses are guaranteed only by Section 9 of Article I of our Constitution to an accused in a criminal prosecution. The investigatory and fact-finding functions of the Labor-Management Commission of Inquiry are clearly not a criminal prosecution (see Article 381, Louisiana Code of Criminal Procedure; State v. Williams, 192 La. 718, 189 So. 112, 122 A.L.R. 665; State v. Shushan, 206 La. 415,

19 So. 2d 185) and, hence, plaintiff's claim of denial of due process cannot in anywise be supported by Section 9 of Article I of the Louisiana Constitution.

Reverting again to the claim that the powers vested in the Commission violate the due process provision of Section 2 of Article I of our Constitution, we believe that the functions of the Commission, i.e., investigatory and fact finding, are somewhat akin to that of the grand jury lacking, however, the effectiveness of formal accusation, for the Commission reports merely inform the Legislature, the Governor and other executive officers that a crime has probably been committed. Without action on the part of those officers charged with the duty of prosecuting crime, the Commission's findings amount to nought. It is merely advisory and does not affect constitutional rights.

On the other hand, unlike grand jury proceedings, the Commission's hearings and findings may be public, and this is the underlying basis of plaintiff's complaint, for he says that this Commission is permitted to slander and otherwise castigate him, and that the only way he can exculpate himself from scandalous charges is to be indicted or informed against in a criminal prosecution. The thrust of the argument is that, absent the right of confrontation by his accusers, cross-examination and the summoning of his own witnesses, he may be subjected to slander, villification and disapprobation for which he is without redress, as the statute grants the members of the Commission and its employees immunity in any suit from any liability for damages in connection with its findings or proceedings had in the exercise of their duties.

We find no merit in this complaint. For it would overlook, we think, the fundamental concept that a mere accusation by those vested with governmental powers, act-

ing in the course and scope of their duties, does not in anywise deny due process to the accused. Indeed, the argument seems to be based on the premise that there is some sort of constitutional distinction between the public hearings of an administrative body and the secret proceedings of a grand jury. However, we know of no basic objection from a constitutional standpoint to an open investigation by an administrative body, from whose factual findings accusations of commission of crime may subsequently be charged by the properly constituted authorities. When the grand jury indicts and when a prosecutor charges by information, the accused is assuredly just as scandalized, actually more so, as the person found to have violated a criminal law by the Commission. Yet, no one could logically contend that the accused can claim violation of due process because he did not have a pretrial investigation with confrontation and cross-examination before the filing of the criminal charge.

In this connection we note that plaintiff's counsel, both in the district court and here, has contended that our per curiam opinion in State v. Open Hearing Investigation, 245 La. 1059, 162 So. 2d 565, controls the result that should be reached in the matter at hand.

The district judge was of the opinion that the cited case was not applicable because the Open Hearing Investigation involved a hearing instituted under R.S. 15:17.1 and 15:156 (which have since been repealed) in the nature of a judicial proceeding brought by the Attorney General or district attorney before a judge.

We agree with the conclusions of the district judge on this phase of the case. Since the statutes under which the open hearing was instituted did not prescribe procedural rules for the holding of such a hearing, a majority of this

Court felt that certain guidelines should be laid down for conducting the investigation and, since it was a judicial proceeding, we found that all formalities respecting the constitutional and legal rights of an accused in a criminal prosecution were to be observed. The case at bar is different for two cogent reasons.

First, the hearings provided for are before an administrative commission created by the Legislature, and the Commission's function to investigate and report to various executive and prosecuting officers, and also the Legislature, is purely administrative in nature. Secondly, since the act itself provides the procedural rules to be followed, this Court is without authority to strike down those procedures in the absence of a finding that they are unconstitutional. Besides, the establishment of guidelines for the procedure in the Open Hearing Investigation was in essence an advisory view given under our supervisory powers to control proceedings before inferior courts when, from the nature of the case, it is apparent that the legal and constitutional rights of all parties involved require protection.

We also are of the opinion that plaintiff's claim that the legislation violates the Fourteenth Amendment to the Constitution of the United States providing "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *" is equally without merit. In fact, it is our view that the Legislature in its effort to comply with the due process clause of the Fourteenth Amendment drafted the rules of procedure for the Commission in strict accordance with the views expressed by the majority opinion of the Supreme Court of the United States in the recent case (1960) of Hannah v. Larche, 363 U.S. 420, 4 L. ed. 2d 1307, 70 S. Ct. 1502.

In that matter, the Court was confronted with the

charge that the rules of procedure' adopted by the Civil Rights Commission (authorized by Congress in the Civil Rights Act of 1957, 71 Stat. 634, 42 U.S.C. §§ 1975-1975e) were violative of due process on the grounds that the Commission had been invested with power to adjudicate on matters affecting the life, liberty or property of the person under investigation. In determining that the contention was not well founded, the Court held that the Civil Rights Commission was empowered only to investigate allegations that persons had been discriminatorily deprived of their right to vote, and to report its findings to the President and the Congress.

The powers vested in the Commission in the case at bar are comparable and identical in scope with those reposed in the Civil Rights Commission, i.e., the authority to investigate and report. The Supreme Court in the cited case stated:

> "As is apparent from this brief sketch of the statutory duties imposed upon the Commission, its function is purely investigative and fact-finding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action." (See pp. 1320-21, 4 L. ed. 2d)

Moreover, in answer to plaintiffs' claim that confrontation, cross-examination, et cetera, were required in order to provide due process since the Commission's proceedings might irreparably harm "* * * those being in-

vestigated by subjecting them to public opprobrium and scorn, the distinct likelihood of losing their jobs, and the possibility of criminal prosecutions * * *" (just as plaintiff is claiming in this case) the majority opinion in the Hannah case reasoned that, even if such collateral consequences were to occur (a purely conjectural result) from the Commission's investigations, "* * * they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission's investigative function." (See p. 1322, 4 L. ed. 2d)

Counsel for plaintiff and the trial judge impliedly recognize, as they must, the force of the majority opinion[2] in Hannah v. Larche, in which all of the cases relied on by the trial judge for his opposite view in this case were considered and distinguished.[3] This is made evident from a consideration of the judge's opinion herein, as well as the argument of counsel for plaintiff, which are based on the concurring opinion of Mr. Justice Frankfurter. In concurring in the result in the Hannah case, Mr. Justice Frankfurter assigned reasons plainly in discord with the view of the majority. This Court not only shares the majority view but, were it otherwise, we would perforce be bound to follow it.

Being of the opinion that the statute does not violate due process, we pass on to a consideration of plaintiff's other attacks on its constitutionality.

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[2]The opinion was subscribed to by six justices. Mr. Justice Frankfurter concurred in the result and Mr. Justice Douglas, with whom Mr. Justice Black concurred, dissented.

[3]The cases cited by the judge are Morgan v. United States, 304 U.S. 1, 82 L. ed. 1129, 58 S. Ct. 773; Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 95 L. ed. 817, 71 S. Ct. 524; and Greene v. McElroy, 360 U.S. 474, 3 L. ed. 2d 1377, 79 S. Ct. 1400. The prevailing opinion in the Hannah case declares: "Those cases are all distinguishable in that the government agency in each was found by the Court to have made determinations in the nature of adjudications affecting legal rights."

Counsel contends that Section 880.6(C) of the statute is unconstitutional in that it authorizes the Commission to assign all or part of its forces to the State Police to assist the latter in investigating any violations or probable violations of law, and that when so assigned these investigators have all the power and authority of other members of the State Police. It is said that this provision offends Section 15 of Article XIV of the Louisiana Constitution (the Civil Service Law) forasmuch as it is provided therein that the State Police shall function under the merit system and no one shall become a member of the State Police without first being examined as to his qualifications and being certified as eligible to become such a member.

We find no substance in the complaint. The investigators of the Commission do not become members of the State Police when temporarily assigned upon the request of the Governor, but are only given the power and authority of members of the State Police while acting under the assignment.

The next contention is that the statute violates Section 16 of Article III of the Constitution, it being asserted that it embraces more than one object and its title is not indicative of its objects.

We think the argument specious. The act has but one object—the creation of a Commission to investigate and find facts relative to the existence and violation of criminal laws in the field of labor-management relations in this State as a result of widespread shutdowns in the construction industry. Every provision of the law is germane to this single aim and purpose.

Counsel states that there are multiple objects, i.e., cre-

ation of new State Police Officers, Section 880.6(C); it defines new crimes and misdemeanors, Section 880.14; it grants power to officials of the Commission to give immunity to witnesses as to both State and Federal criminal prosecutions, Section 880.13; and confers immunity from civil suits for damages in favor of the Commission's members and employees, Section 880.16.

We find that all of these provisions are concomitant to the one aim and single purpose for which the legislation was enacted. Compare Stewart v. Stanley, 199 La. 146, 5 So. 2d 531.

Counsel proclaims that Sub-Section 2 of Section 880.18, which provides for an appropriation out of the General Fund of $250,000 for the use of the Commission for its operations is violative of Section 9 of Article IV of the Constitution, which specifies in substance that all appropriations other than these embraced in the General Appropriation Bill shall be made by separate bills "* * * each embracing but one object."

This contention hinges on a finding that the act in question contains more than one object and, since we hold that it does not, the appropriation is not violative of the constitutional provision. Compare Stewart v. Stanley, supra.

Plaintiff's petition alleges, inter alia, that Section 880.16 of the act denies him due process because it grants immunity to members and employees of the Commission from any suit or liability for damages sustained by a party as a result of the exercise of its functions and obligations in conformity with the provisions of the law. It is declared that this violates Section 6 of Article I of the Louisiana Constitution prescribing that all courts shall be

open, and every person for injury done him in his rights, lands, goods, person or reputation shall have adequate remedy by due process of law and justice administered without denial, partiality or unreasonable delay.

The point is insubstantial. The granting of immunity to the members and employees of the Commission does not deny to the courts jurisdiction to provide redress by due process in any suit instituted against these parties and, thus, cannot be regarded as violative of the constitutional provision. Indeed, the question raised pertains only to the validity of the immunity granted and is not in reality an issue in this case.

Finally, counsel declares that the act is unconstitutional as it constitutes an effort to invest the executive branch of the government with powers properly belonging to the judicial branch, violative of Sections 1 and 2 of Article I of our Constitution. Section 1 of Article I is totally without pertinence, and Section 2 of Article I deals with due process. Actually, counsel is really contending that the act is violative of Section 2 of Article II of the Constitution, which deals with the separation of powers of government, and declares that no one of them shall exercise power properly belonging to either of the others.

The short answer to counsel's proposition is that, contrary to his contention, the act does not confer on the executive branch of the government any powers properly belonging to the judicial branch.

For the reasons assigned the judgment appealed from is reversed and annulled and plaintiff's suit is dismissed at his costs.

APPENDIX B

ACT NO. 2
HOUSE BILL NO. 2

BY: MESSRS. MUNSON, LeBRETON, ORDONEAUX, GREMILLION AND MRS. WALKER AND MESSRS. DAWSON, McGEHEE, KEOGH, BERNHARD, HIMEL, TRICHE, GUIDRY, DWYER, BEESON, McMILLAN,* S. M. MORGAN, CASEY, TARVER, ANGELLE, SINGLETON, DeWITT, GREGSON, BOESCH, HILLENSBECK, CULPEPPER, COOPER, WILLIAMS, SULLIVAN, FORTIER, BORDES, CEFALU, FULCO, A. D. BROWN, JOHNSTON, DELONY, ANZELMO, BLUE, CHAISSON, CHRISTIAN, CRAIS, DALEY, LeBLANC, EARLY, GIBBS, GILL, HESSLER, KELLER, LANCASTER, LANDRENEAU, LAURICELLA, LYONS, MARCEL, McLAIN, O'BRIEN, PATTEN, POLK, RICHARDSON, SCHIELE, SIMON, STROTHER, SYLVESTER, TALBOT, VESICH, WILBANKS, WOMACK, WOOD, BARRANGER, BAUER, BEL, COLLIER AND SENATORS BLAIR AND O'KEEFE

AN ACT

To amend Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, to add thereto a new Part, to be designated as Part III-A thereof and containing R.S. 23:880.1 through R.S. 23:880.18, both inclusive, to create the Labor-Management Commission of Inquiry; to provide with respect to its composition, selection and other matters relating to the organization and functioning thereof; to fix the powers, duties and functions of said commission

*As it appears in the enrolled bill.

in connection with the investigation and findings of facts relating to violations or possible violations of criminal laws of the state of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations, including the exercise of the subpoena power; the authority to take depositions; to authorize the commission to hold executive and public hearings; to provide with respect to the rights, privileges, duties and immunities of witnesses; to define certain misdemeanors and fix penalties therefor; to provide with respect to contempt committed before the commission or in connection with its process; to require cooperation with the commission by all public officials, boards, commissions, departments and agencies of the state and all political subdivisions thereof; to otherwise provide with respect to matters pertaining to the purposes for which said commission is created, and to appropriate the sum of Two Hundred and Fifty Thousand ($250,000.00) Dollars, or so much thereof as may be necessary, out of the General Fund of the state of Louisiana for the fiscal year 1967-68 to the Labor-Management Commission of Inquiry, to be used by it for operations in connection with the purposes for which it is created.

WHEREAS, unprecedented conditions presently exist in the state under which there has been a shut-down of construction work involving industrial development projects giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations; and

WHEREAS, in connection with the conditions above referred to there have been allegations and accusations of violations of the state and federal criminal laws which should be thoroughly investigated in the public interest; and

WHEREAS, in order to supplement and assist the efforts and activities of the several district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States, it is imperative that additional investigative facilities on a state-wide basis be made available; and

WHEREAS, it is essential that immediate action be taken to empower the Governor in this existing situation and in any similar emergencies that may arise in the future promptly to initiate action by which the facts causing or contributing to such conditions may be investigated and other appropriate action taken when such investigation indicates probable violations of state or federal criminal laws. Now, therefore

Be it enacted by the Legislature of Louisiana:

Section 1. Part III-A of Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, comprising R.S. 23:880.1 through R.S. 23:880.18, both inclusive, is hereby enacted to read as follows:

PART III-A. LABOR-MANAGEMENT COMMISSION OF INQUIRY

§ 880.1. Labor-Management Commission of Inquiry; creation, vacancies, domicile

The Labor-Management Commission of Inquiry is created as a permanent commission administratively, with the powers of inquiry hereinafter set forth only to be exercised on an ad hoc basis as hereinafter provided. The commission shall be composed of nine members who shall be appointed by the governor and who shall serve at the pleasure of the governor. Three of the members shall be appointed from among the representatives of organized labor in Louisiana, three from industry located within

Louisiana and three shall be Louisiana residents and representatives of the public generally. Any vacancy for any cause shall be filled by appointment by the governor in the same manner as above stated. Any temporary vacancy, including recusation of any member in any investigation, may be filled by the governor on an ad hoc basis.

The domicile of the commission shall be in the city of Baton Rouge, but meetings may be held at any place within the state.

§ 880.2. Officers of commission; secretary

The governor shall designate the chairman and vice-chairman, who shall be members of the commission. The governor's executive counsel shall serve as secretary to the commission and shall be the official custodian of all records of the commission, and in proper cases shall authenticate and certify to the accuracy thereof. He shall perform such other functions as are assigned by the commission.

§ 880.3. Compensation of members

The members of the commission shall receive no salary but each shall be paid a per diem of fifty dollars for each day of actual attendance at meetings of the commission and shall be paid at the rate of ten cents per mile for travel expenses incurred while on business for the commission.

§ 880.4. Quorum; vote necessary for actions

A majority of the members of the commission shall constitute a quorum. The affirmative vote of five members of the commission shall be necessary for the commission to take any action.

§ 880.5. Referral of matters to commission by governor

Whenever, in the opinion of the governor, there is serious and substantial indication or there are widespread allegations that there is or may be widespread or continuing violations of existing criminal laws of the United States or of the state of Louisiana affecting in a significant manner labor-management relations in one or more areas of the state and that, as a result thereof, there exists a serious threat to the economic well-being of the affected area or the state as a whole, he may refer the matter to the commission in writing for such action as it is hereinafter authorized to take.

§ 880.6. Public hearings, jurisdiction of commission

A. Whenever the governor refers any matter to the commission, it shall, as expeditiously as practicable, investigate and hold hearings at which it shall receive testimony and documentary evidence, or either of them, and it shall ascertain the facts surrounding or pertaining to and shall make findings with respect to any actual or probable violations of the criminal laws of this state or of the United States which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations. The power, authority or jurisdiction of the commission in the conduct of any investigation and also during the course of any executive session or public hearing held by it shall be investigatory and fact finding only and shall be limited to matters which have been referred to it by the governor and which are or may be violations of the criminal laws of the United States or of this state which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations.

B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations

on any of the strictly civil aspects of any labor problem or dispute, but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matters which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lockout or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters; or (4) any alleged acts of violence or threats of violence or so-called "mass picketing," or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute," as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of

contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

C. Upon the request of the governor, the commission may assign all or part of its investigatory forces to the State Police to assist them in investigating any violations or probable violations of law and in apprehending all persons engaged in violation of law. During such assignment such investigators shall be under the supervision of the Director of the Department of Public Safety and have all the power and authority of other members of the State Police.

D. All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the state and of the political subdivisions of the state shall cooperate fully with the commission, to the end that it may effectively and comprehensively carry out its functions and duties.

§ 880.7. Findings; recommendations to governor; criminal charges; interim reports

A. Upon the completion of its investigations and after public hearing the commission shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law or laws of the United States or of the state of Louisiana arising out of or in connection with or as a result of the matter which is the subject of the investigation. The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; however, it may, in its discretion, include in its findings the conclusions of the commission as to specific individuals or as to the general situation, or as to both, and it may make such recommen-

dations for action to the governor as it deems appropriate. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature. No findings, conclusions, recommendations or reports of the commission may be used as prima facie or presumptive evidence of the guilt or innocence of any person in any court of law.

B. If the commission finds that there is probable cause to believe that there has been a violation of any criminal law of the United States or of this state and that such violation arises out of or in connection with or as a result of a problem or dispute in the field of labor-management relations, it shall report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses. In addition, when directed to do so by the commission, the chairman shall file appropriate charges with the state and federal authorities having jurisdiction.

C. The commission shall make interim reports of its findings to the governor at such times as the commission or the governor may deem desirable.

D. With respect to any of its findings, the commission may request the governor to refer the matter to the attorney general asking that he exercise the full authority conferred by Article VII, Section 56 of the Constitution in causing criminal prosecutions to be initiated in accordance with law.

§ 880.8. Powers of commission

In order to carry out the functions vested in it the commission may:

(1) Adopt, amend, publish and enforce such rules

and regulations, not inconsistent with the provisions of this Part, as it deems necessary to fully effectuate the purposes for which it is created.

(2) Employ and fix the duties and compensation of such attorneys, investigators, staff personnel and other persons and make such other expenditures as it finds necessary to accomplish the purposes of this Part; provided that all salaries and compensation fixed by the commission shall be approved by the governor.

(3) Administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of books, records, documents or other evidence deemed relevant or material to any executive session or public hearing held or deposition taken by the commission, but only at such executive session, public hearing or at the time of taking the deposition. The power herein granted to issue subpoenas and compel attendance of witnesses and the production of books, records, documents or other evidence shall be exercised in accordance with the provisions of Section 880.9 of this Part.

(4) Order testimony to be taken by deposition in cases where the commission determines that a witness is incapacitated, and by vitrue thereof, unable to attend the hearing or to appear in person before the commission during the course of an executive session or a public hearing, or is outside the boundaries of the state of Louisiana. Such depositions may be taken before any person designated by the commission who is authorized to administer oaths. Unless otherwise ordered by the commission, such depositions shall be filed at the public hearing and be made part of the record. Testimony by deposition may be taken within or without the state. If taken within the state subpoena

may issue from the commission compelling attendance and production of records. If taken without the state, the commission may apply to the district court having jurisdiction over the area where the commission is holding an executive session or public hearing, or to the district court in and for the parish of East Baton Rouge, for an order directing the taking of the deposition, in the manner provided by law for the taking of foreign depositions in judicial proceedings.

Testimony taken by deposition shall be reduced to writing by the person taking the deposition, or under his direction, and shall be subscribed by the deponent.

(5) Do and perform any other things necessary to accomplish the purposes for which it is created.

§ 880.9. Service of subpoenas; returns; failure to comply; contempt of commission

A. Subpoenas issued under authority of Paragraph (3) of Section 880.8 of this Part shall be served by domiciliary or personal service and may be served by any sheriff, deputy sheriff or employee designated by the commission. Domiciliary service shall be made by leaving the subpoena at the dwelling house or usual abode of the witness, with a person of suitable age and discretion residing therein as a member of the domiciliary establishment of the witness, or at any place where the business of the witness is regularly conducted, with a person of suitable age and discretion there employed. Subpoenas for the production of documents shall be served in a similar manner. The person making the service of any subpoena shall make a return thereon, setting forth the date, place, type of service and sufficient other data to show service in compliance with this Section. The return shall be signed and promptly returned to the commission.

B. (1) In the event any person fails or refuses to

obey a subpoena issued in accordance with the provisions of this Part, the commission may present its petition to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business, setting forth the facts. The court then shall have the power to compel such person to appear before the commission and give testimony or produce evidence as ordered. Any failure to obey such an order of the court may be punished by the court issuing the same as a contempt thereof. In addition, if any person commits any act which is contemptuous of any authority vested in the commission or of any procedure taken by the commission in conformity with the powers vested in it by the provisions of this Part, the commission may present its petition, setting forth the facts, to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business. Upon a finding of guilt, such person shall be adjudged in contempt of the commission and shall be punished by the court as a contempt of court.

(2) Contempt of the commission shall include but shall not be limited to any of the following acts:

(a) Contumacious failure to comply with a subpoena to appear before the commission, proof of service of which appears of record;

(b) Contumacious violation of an order excluding or separating a witness;

(c) Refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a relevant question when ordered to do so by the commission, or refusal to answer any other question when granted the immunity conferred by Section 880.13 of this Part.

(d) Contumacious, insolvent or disorderly behavior toward the commission, any member thereof or its attorney during the course of any executive session or public hearing, which tends to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;

(e) Breach of the peace, boisterous conduct or violent disturbance tending to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;

(f) Use of insulting, abusive or discourteous language by an attorney or other person at any hearing or in a document filed with the commission.

C. The chairman or other presiding officer may punish breaches of order or of decorum by censure or by exclusion from the hearing, or by both.

§ 880.10. Rights of witnesses; right to counsel

A. No person may be required to appear or to testify at any executive session or public hearing held by the commission or give a deposition unless a copy of this Part and a general statement of the subject of the investigation has been served upon him prior to the time when he is required to appear or to give a deposition.

Provided, however, that in the event a witness objects to a question or a series thereof or to the subpoena on the ground that he has not been given sufficient information as to the subject of the investigation, such objection shall be submitted to the commission, and in the event that the commission determines that the objection has merit, the commission shall inform the witness adequately as to the purpose of the investigation and shall afford the witness reasonable additional time within which to prepare for the hearing. If the commission determines by majority vote

that the objection is without merit, such ruling shall be final, and the witness shall be ordered to answer the questions of the commission or to comply with the subpoena. If the witness fails or refuses to comply with the order of the commission or fails or refuses to comply with the order of the commission after the lapse of such additional time as the commission may have granted him within which to comply after further advising him of the nature of the inquiry, the commission shall exercise its powers set forth in Section 880.9 of this Part.

B. A witness summoned to appear before the commission shall have the right to be accompanied by counsel, who may advise him of his rights, subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at an executive session or at a public hearing may question the witness he accompanies concerning relevant matters. In no event shall counsel for any witness have any right to examine or cross-examine any other witness but he may submit to the commission proposed questions to be asked of any other witness appearing before the commission, and the commission shall ask the witness such of the questions as it deems to be appropriate to its inquiry.

§ 880.11. Witness fees

Witnesses summoned to appear before the commission shall be paid the same fees and mileage as are allowed by law for witnesses in criminal cases.

§ 880.12. Evidence and testimony at executive and public sessions; protection of witnesses; penalties

A. The commission shall base its findings and reports only upon evidence and testimony given at public hearings. Prior to and at any time during or subsequent to the conduct of a public hearing the commission may go into execu-

tive session. It shall go into executive session upon the request of any member of the commission who states that in his opinion evidence or testimony being given or to be given at a public hearing may tend to degrade, defame or incriminate any person. In such executive session it shall afford the person who might be degraded, defamed or incriminated an opportunity to appear and be heard in the executive session, with a reasonable number of additional witnesses in his behalf requested by him, before deciding to receive such evidence or testimony in public hearing. If the commission should decide that such evidence or testimony should be heard in a public hearing, the evidence must be offered and filed anew in the public hearing and the testimony of the witness must actually be given at the public hearing, both without reference to the fact that the commission previously had viewed the evidence in executive session or heard the same or other testimony of the witness in executive session.

Should the commission determine to receive such evidence or testimony in public hearing, the person who might be degraded, defamed or incriminated thereby shall be given an opportunity at the public hearing to appear as a voluntary witness, or to file a sworn statement in his own behalf and submit brief, pertinent, sworn statements of others, or to submit to the commission a list of such persons as he may wish to have subpoenaed as additional witnesses. The actual issuance of any additional subpoenaes shall be in the discretion of the commission.

B. It shall be a misdemeanor for any member of the commission, its counsel or employees, to make public any evidence or testimony taken at a private investigation or at any executive session. Whoever violates this Subsection shall be fined not more than one thousand dollars or be imprisoned for not more than one year, or both.

C. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the commission or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right either to appear personally before the commission and testify in his own behalf as to matters relevant to the testimony or other evidence complained of or, in the alternative at the option of the commission, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

§ 880.13. Immunity of witnesses

Whenever in the judgment of the commission the testimony of any witness, or deposition thereof, or the production of books, papers or other evidence by any witness, in any matter pending before it, is necessary to the public interest and the proper discharge by the commission of its duties imposed by this Part, the commission may make application to the district court having jurisdiction over the place where the hearing is being held, or to the district court in and for the parish of East Baton Rouge, requesting that the witness be instructed to testify, depose or produce evidence subject to the provisions of this Part, and upon order of the court such witness shall not be excused from testifying or deposing, or from producing books, papers or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no such witness so ordered by the court shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-

incrimination, to testify, depose or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court except for a prosecution for perjury or contempt committed while giving testimony, or while deposing or producing evidence under compulsion as provided herein.

§ 880.14. Misdemeanors and penalties

Whoever:

(1) Uses or attempts to use violence, force or threats, with the intent to influence the testimony or conduct of any witness or person about to be called as a witness at any hearing before the commission, whether in executive session or a public hearing, or in connection with any investigation ordered by the commission; or

(2) Uses or attempts to use violence, force or threats to the person, his family, or property of any witness on account of his having attended any session or hearing or investigation, or on account of his testifying or having testified with respect to any pending matter; or

(3) With intent to avoid, evade, prevent or obstruct compliance, wholly or partially, with any subpoena issued by the commission, removes from any place, conceals, destroys, mutilates, alters or by any means falsifies any documentary material subject to such subpoena; or

(4) By force or threats, or by wilful acts prevents, obstructs, impedes or interferes with, or attempts to prevent, obstruct, impede or interfere with the due exercise of rights or the performance by the commission of its duties as imposed by this Part shall be guilty of a misdemeanor and upon conviction shall be fined not more than two thousand dollars or be imprisoned for not more than two years, or both.

§ 880.15. Records of hearings

A. A complete and accurate record shall be kept of each public hearing, and any witness shall be entitled to a copy of his testimony at such hearing, at his own expense.

B. The records of any public hearing held by the commission, when properly authenticated and attested by the secretary of the commission, are public records and shall be subject to the provisions of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950, as amended.

§ 880.16. Immunity of commission members and employees

No action, proceeding or decision of the commission, or any of its members or employees in the exercise of its duties, functions and obligations in conformity with the provisions of this Part, shall subject any member or employee thereof to any suit or liability for damages in connection therewith.

§ 880.17. Budget unit of state; reversion of funds

The commission shall be a separate budget unit of this state, as defined by law, and as such shall be subject to the provisions of Title 39 of the Louisiana Revised Statutes of 1950, as amended, and all other laws relating or applicable to budget units. Any funds appropriated to the commission which remain unexpended and unencumbered at the close of any fiscal year shall be remitted to the state general fund in accordance with law.

§ 880.18. Liberal construction; exclusion from Administrative Procedure Act

The provisions of this Part shall be liberally construed to effectuate the purpose for which it was enacted. The provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950, as amended, shall not apply to the Labor-Management Commission of Inquiry.

Section 2. The sum of Two Hundred Fifty Thousand ($250,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of the General Fund of the state of Louisiana for the fiscal year 1967-1968 to the Labor-Management Commission of Inquiry, to be used by said Commission for operations in connection with the purposes for which it is created.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not effect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

Section 5. The necessity for the immediate passage of this Act having been certified by the governor to the legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the governor.

/s/ VAIL M. DELONY
SPEAKER OF THE HOUSE OF REPRESENTATIVES

/s/ C. T. AYCOCK
LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE

/s/ JOHN J. McKEITHEN
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: July 22, 1967, at 10:52 A.M.

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER 124,349

PATRICK G. MARTONE

versus

CECYL MORGAN, WILLIAM REDMANN, ANDREW P. TUGWELL, J. B. LANCASTER and JOHN JULIEN McKEITHEN

ORIGINAL PETITION

The petition of PATRICK G. MARTONE, resident of East Baton Rouge Parish, State of Louisiana, complaining of Cecyl Morgan, Chairman and member of the Labor-Management Commission of Inquiry, William Redmann, Secretary and member of the Labor-Management Commission of Inquiry, Andrew P. Tugwell, State Treasurer of Louisiana, J. B. Lancaster, State Auditor of Louisiana, John Julien McKeithen, Governor of Louisiana, and the Labor-Management Commission, a body politic of the State of Louisiana, respectfully represents that:

1.

Petitioner is a taxpayer and citizen of the State of Louisiana and as such has an interest in the affairs of state government and in the expenditures of public funds; petitioner further alleges that his said interest and person rights have been adversely affected by the operative effects of the Legislative Act hereinafter mentioned.

2.

Petitioner alleges that Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, otherwise known and cited as R.S. 23:880.1—880.18 (hereinafter sometimes referred to simply as "said Act"), exists in violation of the provisions of the Constitutions of the State of Louisiana and of the United States of America and therefore should be declared null and void and the enforcement of its provisions and the expenditure of public funds in connection therewith should be enjoined in support whereof petitioner further gives this Honorable Court to understand the following:

3.

Petitioner alleges that said legislation purports to establish an administrative Commission of Inquiry for the avowed purpose of investigating activities involved in labor-management relations in the State of Louisiana; as a practical matter, however, said legislation has no legitimate legislative, executive, or judicial objective; in its conceptual context and practical implementation it violates elementary strictures of constitutional separation of powers and truncates and infringes the constitutional liberties of your petitioner and persons similarly situated.

4.

In essence said Commission of Inquiry is nothing but a trial agency, whose sole function is to expose the private affairs of individuals for the purpose of exposure only; by the terms of said Act inquiry is made an end in itself; it is not related to or in furtherance of a legitimate task of the Legislature; the Commission created by said Act re-

ports not to the Legislature, but to the Governor of the State only; and the nature of said reports is confined to its public findings as to criminal law violations of individuals; its members are appointed by the Governor only and serve at his pleasure; in the final analysis said Act creates an agency which is empowered to make findings which publicly brand individuals as criminal law violators but deny to such individuals the constitutional safeguards of confronting and cross-examining their accusers; in its practical implementation said Act creates a State propaganda agency, and installs the Commission members appointed by the Governor as propaganda ministers and, pursuant to the provisions of Section 880.6(D) "All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the State and of the political subdivisions of the State" are mobilized to act in concert with investigative employees of said Commission as a horde of agents to spy on the general public and assemble and collect any type evidence, including hearsay and gossip, to be used to scandalize, defame, degrade and subject to public scorn and obloquy those individuals whom said Commission may whimsically select as its victims.

5.

More particularly petitioner alleges that said Commission of Inquiry is not a legitimate agency of the Legislature, with selfsustaining authority and self-governing discretion; under the provisions of Section 880.1 it is an administrative agency whose powers of inquiry are to be exercised only on an ad hoc basis and only on those occasions, when, in the opinion of the Governor alone, that power should be exercised, all as is more particularly provided in Section 880.5 of said Act; thus the reins of control are vested exclusively in the already powerful hands of

the Governor of the State of Louisiana and the standards of judgment by which he is to be guided in unleashing the consummate power of depredation inherent in said Commission are so vague and indefinite as to offer no legally definable guidelines whatever, with the result that the Governor of the State of Louisiana thereby is invested with arbitrary and capricious powers to injure and damage your petitioner and those persons similarly situated.

6.

Pursuant to the provisions of Section 880.6(B) the Commission of Inquiry is expressly prohibited from engaging in legitimate fact-finding investigation leading to the discovery of relevant evidence in connection with labor-management relations, upon which to base any recommendation for remedial legislation, for as much as said Section provides:

> "The Commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of labor problem or dispute, but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matter which is solely an 'unfair labor practice' or an 'unfair employment practice' or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lock-out or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not neces-

sarily restricted to membership policies, election procedures, membership rights and like matter; or (4) any alleged acts of violence or threats of violence or so-called 'mass picketing' or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a 'labor dispute', as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised throught such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the Commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this part, or except for the institution of contempt proceedings as provided for in this part or except when the Commission has been made a defendant in any civil suit."

7.

To the contrary the scope of function of said Commission is narrowly limited to that of trial agency in that, pursuant to the provisions of Section 880.6(A), at the direction of the Governor, it shall investigate and hold hearings at which it shall receive evidence to ascertain the existence of "facts surrounding or pertaining to * * * any actual or probable violations of the criminal laws of this State or of the United States which relate to, arise out of

or are connected with problems or disputes in the field of labor-management relations" and "shall make findings with respect" thereto, its power in relation thereto being "investigatory and fact-finding only and shall be limited to matters which have been referred to it by the Governor and which are or may be violations of the criminal laws of the United States or of this State which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations."

8.

Pursuant to the provisions of Section 880.7 of said Act, while acting in its capacity as a trial agency, said Commission of Inquiry is under the mandatory duty of making findings of fact; these "findings" are confined to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law or laws of the United States or of the State of Louisiana arising out of or in connection with or as a result of the matter which is the subject of the investigation; furthermore, in stating its "findings", said Commission of Inquiry is authorized to single out individual citizens and to brand them as violators of the criminal laws of the State of Louisiana or of the Federal government; moreover said "findings" must be "publicized"; additionally the public airing of said "findings" must be preceded by a public hearing; after citizens of Louisiana shall have been so publicly branded and scandalized as criminals and criminal law violators, said Commission may then make its recommendations to the Governor as to the type action it wishes the Governor to take against such Louisiana citizens, which would include a request to have the Governor ask the Attorney General to further punish these Louisiana citizens, already convicted in the public mind as criminals, by caus-

ing the criminal prosecution of them, pursuant to Section 880.7(D).

9.

Throughout the process of the public trial and public condemnation of any Louisiana citizen by the said Commission, said citizen has no right to examine or cross-examine any witness who may testify against him; benevolently, however, such a citizen is accorded a token gift; according to the provision of Section 880.10(B) "He may submit to the Commission, proposed questions to be asked" to such witness, and, accordingly as it may be possessed of the grace of kindness "the Commission shall ask the witness such of the questions as it deems to be appropriate to its inquiry."

10

Though the functions of said Commission is not related to or in furtherance of a legitimate task of the Legislature, but to the contrary it functions as a trial agency, under the exclusive control of the Governor, whose only mission is to publicly convict citizens, as criminals or criminal law violators, it is possessed of the awesome combined powers of the judicial and executive branches of State government in aid of enforcing its predatory aims of public depredation of Louisiana citizens; pursuant to the provisions of 880.8 it possesses the power of compulsory process to compel the attendance of witnesses and to require the production of books, records, documents and other evidence deemed relevant or material to any executive session or public hearing; it has power to collect evidence by deposition and is further empowered to enforce its will by punishment for contempt; pursuant to the provisions of Section 880.6(D) all public officials and employees of State govern-

ment, including the political subdivisions thereof, are mobilized and mandatorily impressed into service in a cooperative effort of assisting said Commission in its effort to effectively and comprehensively carry out its functions and duties; furthermore pursuant to the provisions of Section 880.6(C) "upon the request of the Governor, the Commission may assign all or part of its investigatory forces to the State Police to assist them in investigating any violations or probable violations of law and in apprehending all persons engaged in violation of law. During said assignment said investigators shall be under the supervision of the Director of the Department of Public Safety and have all the power and authority of other members of the State Police"; thus, by virtue of the provisions of said Act, all of the employees and officials of State government, including all political subdivisions thereof, which would of necessity include all of the police forces of all municipalities, and all investigatory employees of the Commission, together with every member of the State Police of Louisiana, are mobilized by said Act as a State-wide police force with plenary power and authority to investigate any violations or probable violations of law and to apprehend and imprison persons so allegedly engaged; there is thereby created a veritable police state in Louisiana.

11

Arrayed against such an ominous police structure is your petitioner and persons similarly situated; petitioner alleges that said Act deprives citizens of the State of Louisiana of the right to be secure in their person and in their property, including the right to privacy, the right not to be scandalized and defamed, the right to earn a living without molestation and oppression, without due process of law as secured to petitioner and citizens of Louisiana

by the provisions of Article 1, Section 2 of the Constitution of Louisiana and the Fourteenth Amendment to the Constitution of the United States, in that said Act authorizes and empowers State officials to (a) publicly expose the private affairs of petitioner and citizens similarly situated solely for the purpose of exposure, to (b) publicly convict citizens as criminals or as criminal law violators, to (c) publicly scandalize, degrade and subject to public scorn and obloquy citizens of Louisiana, including petitioner, without constitutional safeguards, such as the effective assistance of counsel, the right of confrontation, examination and cross-examination of witnesses, compulsory process for the attendance of witnesses, effective and meaningful rules of evidence, meaningful and definable standards of guilt or innocence and the right of appeal.

Moreover petitioner alleges that while said Act authorizes and empowers State officials to scandalize, defame, degrade and depredate citizens of Louisiana, including petitioner, with or without just cause, said Act by express provision shuts the doors of all courts of Louisiana against citizens of Louisiana, including petitioner, for redress of grievances, including injury to person and reputation, by expressly providing in Section 880.16 "no action, proceeding, or decision of the Commission or any of its members or employees in the exercise of its duties, functions and obligations in conformity with the provisions of this part, shall subject any member or employee thereof to any suit or liability for damages in connection therewith"; said section or provision additionally violates the constitutional rights of your petitioner and those citizens similarly situated in that said section is contrary to the provisions of Article 1, Section 6 of the Constitution of Louisiana which provides that: "All courts shall be open, and every person for injury done him in rights, lands, goods, person or reputation shall have adequate remedy by due process of law

and justice administered without denial, partiality or unreasonable delay"; and constitutes a denial and taking of property without due process and equal protection.

13

Not only do the provisions of said Act per se deprive petitioner and those citizens similarly situated of constitutional liberties, but the officers, agents, employees, and representatives of said Commission of Inquiry by their acts and deeds have applied the provisions of said Act discriminatorily and illegally against your petitioner and persons known to your petitioner in such a manner as to deny to your petitioner and those similarly situated the equal protection of State laws and due process of law.

14

For example, petitioner is informed, believes and therefore states that certain representatives of said Commission of Inquiry, including one Nick Ross, have extracted statements from third persons through acts of duress, intimidation and corrupt practices, including promises of immunities and things of value, extended to such third persons, solely for the purpose of fabricating charges against your petitioner and others solely for the purpose of bringing about the criminal prosecution and ultimate imprisonment of your petitioner and others similarly situated.

15

More specifically your petitioner alleges that representatives of said Commission of Inquiry, including said Nick Ross, one Capt. Head, and others, including an alleged former F.B.I. agent whose names are unknown to your pe-

titioner, fraudulently induced one Angelo Vanchiere, Jr. and Daniel H. Stuntz to make and subscribe to statements and utterances implicating your petitioner, as well as Edward Grady Partin, and one Chuck Bourgeois in criminal activities antedating the creation of said Commission of Inquiry by some three to four years, and otherwise by threatening said Angelo Vanchiere, Jr. and Daniel H. Stuntz and alternately promising said persons things of value and ultimately giving to the said Daniel H. Stuntz Two Hundred Fifty ($250.00) Dollars in cash plus a 1962 Ford fordor automobile bearing serial #2076X132422 plus a grant of immunity from prosecution of any type, in return for such incriminatory ufterances and statements aforesaid; according to your petitioner's information, said representatives of said Commission of Inquiry caused the said Daniel Stuntz to execute a document which purports to attest to the fact that the Two Hundred Fifty ($250.00) Dollars in cash received by the said Stuntz was in return for services rendered to said Commission of Inquiry as an employee functioning in Lafayette, Louisiana, where in truth and in fact said Daniel Stuntz never was employed by and never worked for said Commission of Inquiry.

Petitioner further alleges that said representatives of said Commission of Inquiry, after fraudulently securing said utterances or statements as herein aforesaid did make public said evidentiary statements by disclosing the same to third parties other than officers or employees of said Commission in an effort to defame and degrade petitioner and others aforesaid; that said disclosure was made with the full knowledge of the Chairman of said commission of Inquiry knowing that to do so constituted a breach of the provisions of Section 880.12(B) of said Act, which reads:

> "It shall be a misdemeanor for any member of the Commission, its counsel or employees, to make public any evidence or testimony taken at a private

investigation or at any executive session. Whoever violates this sub-section shall be fined not more than One Thousand Dollars or be imprisoned for not more than one year or both."

17

Said Commission and the members and officers thereof have knowingly condoned said public disclosure simply because they are possessed by a bias and prejudice against your petitioner and Edward Grady Partin and those associated with your petitioner and particularly those members of the Teamsters Union Local No. 5 of Baton Rouge, Louisiana, and said violation of said section by said representatives of said Commission constitutes but one of a series of acts in furtherance of a discriminatory practice and policy toward your petitioner and those similarly situated; petitioner is informed, believes and therefore states furthermore that said representatives of said Commission, acting in concert and conspiracy among themselves and with others to bring about the criminal prosecution of your petitioner, Edward Grady Partin and others knowingly presented or caused to be presented said fraudulent statements, obtained in violation of State law, to the East Baton Rouge Parish Grand Jury during its current session: the presentation of said fraudulent statements to said Grand Jury is but another affirmative effort on the part of representatives of said Commission to illegally and wrongfully bring about the criminal prosecution of petitioner, Edward Grady Partin and others aforesaid; petitioner is informed, believes and therefore states that the said Angelo Vanchiere, Jr. and Daniel H. Stuntz have repudiated said fraudulent statements and characterized such statements for what they are, namely, fraudulent and false statements, and have made known and stated under oath that said statements were given as a result of threats

directed toward them and promises made to them and gifts received by them.

18

Petitioner alleges, based on information heretofore recited, and otherwise, that the sole purpose for which the Labor-Management Commission of Inquiry was created was to be used as an instrument of the State to scandalize and injure your petitioner, Edward Grady Partin and members of the Teamsters Local Union No. 5 of East Baton Rouge Parish, Louisiana and persons, firms and organizations doing business with or otherwise associated with said persons or Union.

19

Petitioner further alleges that said Legislative Act, in creating the Labor-Management Commission of Inquiry, defining its function and in organizing its power, has in fact and law created an administrative trial agency with authority to make findings of fact as to the guilt or innocence of Louisiana citizens in matters of criminal law violations; said Act, therefore, is additionally null and void for the reason that in so doing it violates the provisions of Article 1, Sections 1 and 2 of the Louisiana Constitution in that it instances an attempt to invest the legislative or executive branches of State government or both, with authority to exercise power properly and exclusively belonging to the judicial branch of government, in that only the judicial branch of government has the constitutional authority to determine the guilt or innocence of citizens of Louisiana in matters of criminal law violations.

20

Further petitioner alleges that said act furthermore is in violation of the provisions of the Constitution of the

State of Louisiana and particularly Article 14, Section 15 thereof to the extent that said Act by virtue of the provisions of Section 880.6(C) installs and invests employees of said Commission of Inquiry with power and authority and as members of the Louisiana State Police.

21

Petitioner further alleges that said legislative Act is additionally null and void for the reason that it exists in violation of the provisions of Article 3, Section 16 of the Constitution of the State of Louisiana in that said legislative Act embraces more than one object and its title is not indicative of its objects.

22

More specifically petitioner alleges that while said Act purports to establish an administrative trial agency to conduct investigations and hearings and make findings of fact, it has additional objects; by virtue of the provisions of Section 880.6(C), it has the additional object of creating new State Police Officers in circumvention of the Civil Service Law established by the provisions of Article 14, Section 15 of the Louisiana Constitution; by virtue of the provisions of Section 880.14 it has the additional object of creating and defining new crimes in the nature of misdemeanors and fixing penalties therefor; by virtue of the provisions of Section 880.13 it has the additional object of creating immunity against prosecution for criminal activities by both the State of Louisiana and the United States Government; by virtue of the provisions of Section 880.16 it has the additional object of creating immunity for the Commission members and employees of said Commission from any liability for damages which otherwise they might

incur for conduct in the performance of duty; that said Act has more than one object is made additionally manifest by the very provision of the title thereof which refers to "purposes for which said Commission is created".

23

Petitioner further alleges that the object of creating and appointing members of the Louisiana State Police falling outside the pale of the Civil Service Law of the State and of exempting Commission members and employees of the Commission from any liability for damages in connection with the performance of their duties are objects and purposes not indicated by the title of said Act.

24

Petitioner further alleges that said Legislative Act is additionally unconstitutional in that it exists in violation of the provisions of Article 4, Section 9 of the Constitution of the State of Louisiana in that said Act, by virtue of the provisions of Section 880.18, Section 2, effects an appropriation out of the general fund of the State of Louisiana of the sum of Two Hundred Fifty Thousand ($250,000.00) Dollars; under the provisions of Article 4, Section 9 of the Louisiana Constitution, however, such an appropriation is valid only where the legislative Act by virtue of which it exists embraces but one object; said Act, however, contains multiple objects as hereinabove recited and therefore Section 880.18, Section 2, to the extent that it attempts to appropriate Two Hundred Fifty Thousand ($250,000.00) Dollars is null and void.

25

Petitioner is informed and being so informed believes and therefore states that officers, agents and representa-

tives of said Commission of Inquiry intend to continue to enforce the provisions of said legislative Act and furthermore said officers, agents and representatives of said Commission are now taking steps and intend to continue to take steps, through the employment of the provisions of said legislative Act and through the fraudulent ways and means herein aforesaid, to scandalize, defame, degrade and otherwise injure and to subject your petitioner and those similarly situated to public scorn and obloquy, and to bring about the criminal prosecution and conviction of your petitioner and those similarly situated; your petitioner has no adequate remedy at law to prevent said officers, agents and representatives of said Commission of Inquiry from so injuring your petitioner and those similarly situated; as herein aforesaid said legislative Act purports to grant to said officers, agents and representatives absolute immunity against any and all claims for damages resulting from such injury occasioned by the conduct of said officers, agents and representatives of said Commission of Inquiry, unless, therefore, this Honorable Court in the exercise of its equity powers issue an injunction directed against said officers, agents and representatives of said Commission of Inquiry preventing them and each of them from taking steps leading to the infliction of injury and punishment on your petitioner and those similarly situated by the enforcement of the provisions of said Act and the employment of the fraudulent practices aforesaid, your petitioner and those similarly situated will suffer irreparable injury.

26

Your petitioner is informed and being so informed, believes and therefore states that the members of said Commission of Inquiry have scheduled a public hearing for Monday, December 18, 1967, during the course of which said members of said Commission intend to elicit testimony

from witnesses designed to scandalize, degrade, deface and subject your petitioner and those similarly situated to public scorn, ridicule and obloquy as to which your petitioner has no adequate remedy as herein aforesaid; the exigencies of the case are such that your petitioner and those similarly situated will suffer irreparable injury before a hearing on a preliminary injunction can be conducted; that therefore a temporary restraining order should issue immediately and before a hearing enjoining, prohibiting and restraining the officers, agents and representatives of the Labor-Management Commission of Inquiry from taking any steps whatsoever leading to or in connection with the enforcement of the provisions of the legislative Act herein mentioned.

27

Petitioner believes and therefore alleges that the Labor-Management Commission of Inquiry, its officers, agents, representatives and employees will have been and will continue to draw warrants upon the State's Treasurer for the disbursement of public money in connection with the function of said Commission of Inquiry and that unless Andrew P. Tugwell, State Treasurer, is enjoined and prohibited by this court as hereinafter recited, he will honor said warrants and will authorize the disbursement of public funds accordingly; similarly unless an injunction do issue against J. B. Lancaster, State Auditor, he will likewise permit the withdrawal and expenditure of such public funds; the exigencies of this case are such that unless a temporary restraining issue immediately and before a hearing there will result irrecoverable expenditure of public funds and your petitioner and citizens of the State of Louisiana similarly will consequently suffer an irreparable injury in the nature of irrecoverable loss of such public funds.

WHEREFORE PETITIONER PRAYS that Cecyl Morgan, William Redmann, Andrew P. Tugwell, J. B. Lancaster, John Julien McKeithen and the Labor-Management Commission of Inquiry, by and through its Chairman, Cecyl Morgan, be duly cited and served with process as provided for by law.

PETITIONER FURTHER PRAYS that temporary restraining order do issue herein immediately and before a hearing restraining, enjoining and prohibiting Cecyl Morgan, William Redmann, the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, or their successors in office, and John Julien McKeithen, Governor of Louisiana, from in any manner enforcing, implementing or carrying out or attempting to enforce, implement or carry out the provisions of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, known and cited as R.S. 23:880.1—880.18, by conducting any investigation or hearing of any type, including the interrogation of any person or the eliciting or attempted eliciting of any evidence from any person, or by making or uttering or communicating any findings or evidence as to the existence or non-existence of any criminal law violations or as to the involvement of any person, firm, corporation or other legal entity in any criminal law violation of any type whatever and/or by incurring any obligations or debts, or expending any public funds or requesting or directing the expenditure of public funds in connection with the function of the Labor-Management Commission of Inquiry; that a temporary restraining order furthermore issue restraining, enjoining and prohibiting Andrew P. Tugwell, State Treasurer, and J. B. Lancaster, State Auditor, their agents, representatives and employees or either or any of them, from receiving, paying or making any other or further payments or expenditures of the Two Hundred Fifty Thousand ($250,-

000.00) Dollars specially appropriated by the Legislature in Section 880.18, Sub-Section 2 of said Act.

PETITIONER FURTHER PRAYS that said defendants be further ordered to show cause on a day and hour to be fixed by this Honorable Court why a preliminary injunction should not issue herein, in the nature, to the extent and for the purposes of the temporary restraining order herein prayed for.

PETITIONER FURTHER PRAYS that after due proceedings had there be judgment herein in favor of your petitioner and against the Labor-Management Commission of Inquiry, Cecyl Morgan, William Redmann, Andrew P. Tugwell, J. B. Lancaster and John Julien McKeithen, ordering and decreeing Act No. 2 of the First Extraordinary Session of the Louisiana Session for 1967, known and cited as R.S. 23:880.1—880.18, to be unconstitutional, null and void and permanently enjoining the enforcement of said Act by restraining, enjoining and prohibiting Cecyl Morgan, William Redmann, John Julien McKeithen, the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, or their successors in office, from in any manner enforcing, implementing or carrying out or attempting to enforce, implement or carry out the provisions of said Act by, among other acts and deeds, conducting any investigation or hearing of any type, including the interrogation of any person or the eliciting or attempted eliciting of any evidence from any person, or by making or uttering or communicating any findings or evidence as to the existence or non-existence of any criminal law violation or as to the involvement of any person, firm, corporation or other legal entity in any criminal law violations of any type whatever and/or by incurring any obligations or debts or expending any public funds or requesting or directing the expenditure of

public funds in connection with the function of said Labor-Management Commission of Inquiry and further enjoining, restraining and prohibiting Andrew P. Tugwell, State Treasurer, and J. B. Lancaster, State Auditor, their agents, representatives and employees or either or any of them, from receiving, paying or making any other or further payments or expenditures of the Two Hundred Fifty Thousand ($250,000.00) Dollars specially appropriated by the Legislature by virtue of the provisions of said Act.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON
ATTORNEY FOR PETITIONER

OF COUNSEL:
J. Minos Simon
John Rixie Mouton
Noe P. Giuffrida

FIRST SUPPLEMENTAL PETITION

Now into court through undersigned counsel comes PATRICK G. MARTONE who respectfully represents that:

1.

Plaintiff alleges that the Labor-Management Commission of Inquiry, acting through its agents, employees and representatives, is engaged in unbelievable squandering of public funds, including, according to plaintiff's information, instances of nepotism and double-dipping.

Among the many examples of such gross squandering of public funds are the following:

2.

Plaintiff is informed, believes and therefore states that defendant McKeithen, acting under the unconstitutional usurpation of power conferred upon him by the provisions of Section 880.6(c) of the Labor-Management Commission of Inquiry Act, requested the Commission of Inquiry to assign Joseph A. Oster and Raymond Ruiz, investigators for the Labor-Management Commission of Inquiry, to the Louisiana State Police and that the said Commission of Inquiry acting in response to said request, effected the assignment of said investigators to the Louisiana State Police; that by virtue of the provisions of said Act aforesaid said assignment invested said investigators with "all the power and authority of other members of the State Police"; thus said investigators by virtue of said administrative Act became members of the State Police though they failed and continue to fail to qualify under the Civil Service or Merit System of the State of Louisiana as mandatorily prescribed by the provisions of Article 14, Section 15 of the Constitution of the State of Louisiana.

3.

Though not required to stand an examination to qualify as members of the State Police and not in fact qualified as members of the State Police, said Joseph A. Oster and Raymond Ruiz assumed the official function of members of the State Police and according to your plaintiff's information on or about December 30, 1967 said Joseph A. Oster and Raymond Ruiz conducted an alleged raid in Iberville Parish, Louisiana, in the process of which they seized four (4) slot machines plus two (2) "spare parts" mechanisms.

4.

Plaintiff alleges that members of the State Police of Louisiana heretofore have demonstrated beyond a doubt that they are duly qualified pursuant to the Civil Service Laws of the State of Louisiana and are competent to seize slot machines, if any exist in the State of Louisiana, and to stamp out gambling, including bingo, if defendant McKeithen directs said State Police to do so, as he has heretofore claimed that he did, except as to gambling by bingo; instead of engaging the services of the competent members of the Louisiana State Police who have been qualified by the Civil Service Board of the State of Louisiana, said defendant McKeithen bypassed these duly qualified members of the Louisiana State Police; on the contrary he requested that the said Joseph A. Oster and Raymond Ruiz assume the function of members of the State Police for the purpose of conducting said raid in Iberville Parish, Louisiana aforesaid;

5.

Said assignment was not only deplorably unnecessary, because, as aforesaid, there was available competent members of the Louisiana State Police to conduct the raid aforesaid, but said assignment instances a reckless abandonment of official responsibility and a reckless disregard of the wise expenditure of public funds in that said Joseph Oster, while acting as a member of the State Police, was being paid and continues to be paid a salary of Seventy Five ($75.00) Dollars per day; and said Raymond Ruiz, while acting as a member of the State Police, was being paid and continues to be paid a salary of Fifty ($50.00) Dollars per day.

6.

More than this plaintiff alleges on information that said assignment instances not only a reckless squandering of public funds, but a flagrant and willful misuse and abuse of power of defendant McKeithen, made possible only by the unconstitutional provisions of the Labor-Management Commission of Inquiry Act, and the cooperation of some members thereof, employees, representatives and agents thereof as well as others.

7.

Plaintiff is further informed, believes and therefore states that defendant McKeithen, acting in concert with some members of the Commission of Inquiry, its agents, employees and representatives and others, is willfully and intentionally using the Commission of Inquiry as an instrument of intimidation to bludgeon into submission or into political oblivion those who disagree with him politically or otherwise, or who may be offensive to the economic or privileged interest of his friends or who may stand in his way, or who McKeithen may think stands in his way, to achieving total political domination over the entire State of Louisiana.

8.

Plaintiff is informed, believes and therefore alleges that the aforesaid assignment of Oster and Ruiz by defendant McKeithen was and continues to be an act in furtherance of the aforesaid conspiracy, in that it was an act in furtherance of McKeithen's intention to discredit and injure Jessel Ourso, Sheriff of Iberville Parish, Louisiana; furthermore McKeithen, acting in concert with others as aforesaid, has caused said Sheriff Ourso to be

subpoenaed to testify before the Commission of Inquiry on February 8, 1968; ostensibly Ourso is to testify concerning labor-management problems; in truth and in fact, however, the real purpose is to create an opportunity for certain willful members of the Commission of Inquiry to degrade and attempt to discredit said Sheriff Ourso by the use of hearsay and otherwise incompetent evidence, so as, in combination with the alleged raid and seizure of slot machines, to lay an ominous foundation to be used by the said McKeithen as a basis to address the said Sheriff Ourso out of office at the upcoming May Session of the Louisiana Legislature.

9.

Plaintiff is further informed, believes and therefore states that the said McKeithen and those acting in concert with him seek to discredit labor unions of the State of Louisiana by calumniating and degrading labor union leaders, while cunningly singling out a numbered few for praise, with a view to establishing a public climate and legislative ferment for the passage of a right-to-work bill designed and purposed to destroy the effectiveness of labor organizations in the State of Louisiana.

10.

According to your plaintiff's information further examples of squandering of public funds are as follows: Not one investigator is paid less than Fifty ($50.00) Dollars per day. The salaries of the following investigators are: H. Lynn Augustine, Seventy Five ($75.00) Dollars per day; Maurice F. Head, Fifty ($50.00) Dollars per day; Edward J. Roussel, Fifty ($50.00) Dollars per day; Raymond Ruiz, Fifty ($50.00) Dollars per day; Joseph Oster,

Seventy Five ($75.00) Dollars per day; Robert A. Wilson, Fifty ($50.00) Dollars per day; A. Harry Roberts, One Hundred ($100.00) Dollars per day; James Curley, Fifty ($50.00) Dollars per day.

11.

Furthermore, according to plaintiff's information, A. Harry Roberts has received directly or indirectly a total in excess of Seventeen Thousand ($17,000.00) Dollars since August 1, 1967; he received in salary Ten Thousand Six Hundred Seventy Five ($10,675.00) Dollars. In addition to this he received as travelling expenses the sum of Four Hundred Fifty Two and 67/100 ($452.67) Dollars; according to plaintiff's information A. Harry Roberts is the owner of Southern Research Co., Inc.; the Commission of Inquiry according to plaintiff's information, paid to Southern Research Co., Inc. for what is designated as "fees and expenses of A. Harry Roberts" in addition to the salary heretofore mentioned, on September 1, 1967, the sum of Two Thousand Seven Hundred Eighty Four and 77/100 ($2,784.77) Dollars, and on October 31, 1967, the sum of Two Thousand Two Hundred Eighty Eight and 49/100 ($2,288.49) Dollars.

12.

Plaintiff is informed, believes and therefore states that said Commission of Inquiry paid the said Joseph A. Oster as salary since August 1, 1967 the sum of Six Thousand Four Hundred Forty and 60/100 ($6,440.60) Dollars, up to December 11, 1967, and the sum of Seven Hundred Eighty Nine and 64/100 ($789.64) Dollars in travelling expenses as of December 11, 1967; said Raymond Ruiz received in salary and expenses the sum of Four Thousand Seven Hundred Ten and 94/100 ($4,710.94). Dollars.

13.

According to your plaintiff's information one Roger Brandon is a relative of A. Harry Roberts; according to your plaintiff's information the Commission of Inquiry paid to Aero-Mayflower Transit Co. the sum of One Thousand Sixty Five and 50/100 ($1,065.50) Dollars to move the belongings of Roger Brandon from the State of California to the State of Louisiana, in addition to which said Commission of Inquiry on October 31, 1967 paid to the said Roger Brandon that which is labeled as travel expenses, the sum of One Thousand Forty Three and 67/100 ($1,043.67) Dollars; the said Brandon was paid further travelling expense on October 30 in the sum of Ninety Four and 50/100 ($94.50) Dollars and on December 11 the sum of One Hundred Thirty Three and 70/100 ($133.70) Dollars; said Roger Brandon was paid an amount for salary on October 31 of Four Hundred Seventy One and 37/100 ($471.37) Dollars and on November 30, 1967 he was paid twice, one in the sum of Four Hundred Seventy One and 76/100 ($471.76) Dollars and the other in the sum of Four Hundred Fifty One and 15/100 ($451.15) Dollars, purportedly as salary.

14.

The composition of the Commission of Inquiry is such that an overwhelming number of its members, agents and representatives, by virtue of their background, training, current interest and inclination, is opposed to the common laborer and to labor unions, and these members therefore have a bias and prejudice against plaintiff and those similarly situated; these members have, continue, and intend to continue to degrade and injure your plaintiff and those similarly situated.

15.

Furthermore, A. Harry Roberts, chief investigator for the Commission of Inquiry, is notoriously known and in fact is a representative of management in those areas of acute controversy between labor and management; said A. Harry Roberts, according to your plaintiff's information, is owner of Southern Research Co., Inc., and he and his said corporation, for many years preceding the creation of the Commission of Inquiry, have been engaged by innumerable representatives of management to advocate the cause of management in opposition to that of labor and to engage in practices disruptive and degrading of labor organizations and their leaders and representatives.

16.

In addition to being owner of Southern Research Co., Inc., plaintiff is informed, believes and therefore states that the said A. Harry Roberts owns a fifty (50) percent interest in Joseph A. Oster & Associates, Inc., an anti-labor investigative agency comparable to Southern Research Co., Inc., located in New Orleans, Louisiana; according to plaintiff's information Joseph A. Oster, an investigator for the Commission of Inquiry, owns the remaining one half interest of said corporation; A. Harry Roberts, acting as chief investigator for the Commission of Inquiry, knowing of his financial interest in Joseph A. Oster, nevertheless recommended and caused the hiring of the said Joseph Oster as an investigator for the Commission of Inquiry at a salary of Seventy Five ($75.00) Dollars per day plus travelling expenses; for the reason herein aforesaid and otherwise, the said A. Harry Roberts is knowingly using the Commission of Inquiry and his position therewith as a means of improperly enhancing his fi-

nancial interest and promoting his private estate by promoting and enriching himself, Southern Research Co., Inc. and Joseph A. Oster & Associates, Inc.

17.

Moreover, plaintiff alleges that investigators for the Commission of Inquiry continue to intimidate and threaten witnesses; more particularly plaintiff is informed, believes and therefore alleges that on December 29, 1967, Nick Ross, one of the investigators for the Commission of Inquiry in the company of James Curley, another investigator, threatened one Daniel Stuntz, a witness under subpoena in this case, in an effort to influence his testimony in this case;

18.

More specifically plaintiff alleges that said Nick Ross accosted said Stuntz at the Caroussel Lounge located along U.S. highway 190 in West Baton Rouge Parish, Louisiana at about 9:30 P.M., December 29, 1967; on this occasion said Ross ordered Stuntz to sit at a table with said Ross and Curley and then proceeded to curse and villify said Stuntz, calling him a bum, punk, S.O.B., bastard and similary derogatory epithets, and told said Stuntz there was no place he, Stuntz, could go to hide from said Ross as said Ross would "get" him; that he, Stuntz, would have no peace, if he remained in East Baton Rouge Parish; furthermore, said Ross told Stuntz: "Punk, you know I can whip you" and in the same breath and in the same aggressively hostile tone, he said further in an effort to intimidate said Stuntz into retracting a statement favorable to plaintiff, "You know you didn't lie to me downtown"; said Ross further told Stuntz: "I'll get you, that God damn

Ed Partin, that no good Minos Simon and Martone, if its the last thing I do before I die."; Stuntz tried to leave, but said Ross ordered him to remain, and when Stuntz finally was permitted to leave, Ross then warned: "I'll whip you with my hands tied behind my back";

19.

Thus defendants and their agents are willfully obstructing the due course of justice, attempting to deprive plaintiff of constitutional due process and equal protection, by intimidating his witnesses and his attorney as aforesaid.

WHEREFORE PLAINTIFF PRAYS for leave of court to file the foregoing supplemental and amending petition and after due proceedings had there be judgment herein in favor of plaintiff and defendants as prayed for in his original petition.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON
ATTORNEY FOR PLAINTIFF

APPENDIX C

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER 124,349, DOCKET 2

PATRICK G. MARTONE

vs.

CECYL MORGAN, ET AL.

REASONS FOR JUDGMENT

The plaintiff attacks the constitutionality of Act Number 2 of the Extraordinary Session of the Legislature of 1967 and seeks to enjoin the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, and the Honorable John J. McKeithen, Governor of the State of Louisiana, from in any manner enforcing and carrying out the provisions of said act. Relief by injunction is also sought against the Honorable Andrew P. Tugwell prohibiting him from making payments of funds to carry out the provisions of said act.

The preamble of the act states that unprecedented conditions then existed in the state under which there had been a shut-down of construction work involving industrial development projects giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations, and in connection with the aforesaid conditions that there had been allegations and accusations of violations of state and federal criminal laws which should be thoroughly investigated in the public interest.

It is further stated therein that in order to supplement and assist the efforts and activities of the several

district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States that it was imperative that additional investigative facilities on a state-wide basis be made available and that the Governor of the State of Louisiana should be empowered to take immediate action in the then existing situation and in any other similar emergency that may arise in the future by which facts causing or contributing to such conditions may be investigated.

Thereafter the act created a Labor-Management Commission of Inquiry and charged it as follows:

> "Section 880.6. Public hearings, jurisdiction of commission
>
> "A. Whenever the governor refers any matter to the commission, it shall, as expeditiously as practicable, investigate and hold hearings at which it shall receive testimony and documentary evidence, or either of them, and it shall ascertain the facts surrounding or pertaining to and shall make findings with respect to any actual or probable violations of the criminal laws of this state or of the United States *which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations.* The power, authority or jurisdiction of the commission in the conduct of any investigation and also during the course of any executive session or public hearing held by it shall be investigatory and fact finding only and shall be limited to matters which have been referred to it by the governor and which are or may be violations of the criminal laws of the United States or of this state *which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations.*" (Emphasis, the Court's)

There are other provisions excepting certain matters

from the jurisdiction of the commission which are not at the moment pertinent.

Two of the grounds upon which the statute are attacked can be disposed of quickly. The contention that it embraces more than one object and is not properly titled do not, in the Court's opinion, warrant serious consideration. The statute falls within the range permitted by the jurisprudence of the state. The contention that the attachment of investigators to the State Police violates the Civil Service amendment is likewise without merit. Although such investigators have the power and authority of other members of State Police, they are not in fact members of the State Police, and in my opinion have no jurisdiction whatsoever over any investigation not related to, arising out of, or connected with violation of criminal laws in the field of labor-management relations. (Section 880.6-A and 800.7-B).

The principal attack made on the constitutionality of the statute is based essentially on the grounds that it fails to provide witnesses summoned before it with the basic constitutional safeguards as guaranteed by the state and federal constitutions such as the effective assistance of counsel, the right of confrontation, examination and cross-examination of witnesses, compulsory process for attendance of witnesses, effective and meaningful rules of evidence, meaningful and definable standards of guilt or innocence, and the right of appeal.

The act does not make provision for those who are under investigation to be confronted with their accusers or witnesses who appear against them to cross-examine any of said witnesses that may appear against them except through the means of submitting to the commission proposed questions to be asked of the witnesses appearing before the commission and which questions shall only be

asked by the commission provided that it deems it appropriate to its inquiry. In other words, counsel for any witness does not have an unfettered right to cross-examine any other witness, and neither does he have an absolute right to call witnesses in his own behalf, although he may request the same.

The statute does provide for certain rights of witnesses such as to guarantee to them advance knowledge of the subject of the investigation, granting to them the right to object to questions or series of questions propounded to them, granting to them the right to be adequately informed as to the purpose of the investigation, granting to each witness time and additional time in which to prepare for the hearing, and granting to the witness the right to be accompanied by counsel so that he may be advised of his rights and may be questioned by counsel concerning relevant matters.

Counsel for neither party has favored the Court with any Louisiana cases directly in point, and the Court in its own research has found none. There is, however, a very comprehensive decision of the United States Supreme Court which the Court feels contains a full discussion of the principles of law which should be dispositive of this case, and the Court refers to the case of *Hannah v. Larch*, (1960), 363 U.S. 420, 5 L. Ed. 2d 1307, 80 S. Ct. 1502.

Before getting into a discussion of these principles, let me say that the Court gives no weight whatsoever to the political accusations made by and the improper motives ascribed to the proponents of the legislation in question by petitioner, and while the Court shares the Governor's concern about the effect of an adverse decision on the "image" of the state which he has so assiduously cultivated, it is not the Court's prerogative to decide cases of this sort on the basis of the wishes of the majority, or on

popular opinion, or even on one's own conception of the public good, nor is it the Court's function to decide the need for or wisdom of the legislation involved. The sole function of the Court is to apply the legal principles as it understands them to the statute in question and either sustain its constitutionality or rule it invalid.

Certainly, as Justice Frankfurter said in the *Hannah* case, it is important that those charged with the responsibility of governing not be unduly confined by "doctrinaire conceptions of due process" and that the question of whether or not the procedure in question offends the rudiments of fair play "is not to be tested by loose generalities or sentiments abstractly appealing." The precise nature of the interest alleged to be adversely affected or of the freedom of action claimed to be curtailed, the manner in which this is to be done and the reasons for doing it, the balance of individual hurt and the justifying public good—these and such like are the considerations, avowed or implicit, that determine the judicial judgment when appeal is made to "due process."

By the same token, as Justice Douglas said in his dissenting opinion in the same case, "We live and work under a Constitution. The temptation of many men of good will is to cut corners, take shortcuts and reach the desired end regardless of the means." With this in mind, it is the Court's appreciation of the law that as a general rule "where governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals," procedural safeguards traditionally associated with the judicial process must be followed, such as the effective assistance of counsel, the right of confrontation, examination and cross-examination of witnesses, compulsory process for the attendance of witnesses, effective and meaningful rules of evidence, meaningful and

definable standards of guilt or innocence and the right of appeal. On the contrary, where "governmental action does not partake of an adjudication, as, for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used." However, it is also basic that each case must be decided on its own; that is, the requirements of due process vary with the type of proceeding involved.

Were the statute involved one which clearly falls into the adjudicatory (for want of a better word) class of statutes on the one hand or in the purely fact finding (also for want of a better word) class of statutes on the other hand, the case would be relatively easy of solution. Unfortunately, the statute in question partakes, in language and in practical effect, of some of each class and a detailed, and I might add, painful, review thereof is necessary.

In analyzing the statute, it would appear that the Labor-Management Commission is a fact-finding agency. This is made evident by the language of the preamble of the act and the specific provisions of Section 880.6, supra. In addition, the statute specifically provides that the commission's power "shall be investigatory and fact finding only" (880.6-A), it has no authority to participate in civil judicial proceedings (880.6-B), that it may make no binding adjudication with respect to violations and that its findings may not be used as prima facie or presumptive evidence of guilt or innocence (880.7-A).

On the other hand, the statute is concerned with the taking of testimony and receiving evidence in a public hearing by the commission to determine if a crime has been committed and to determine the parties responsible for having committed said crime. In other words, there is conducted an open hearing where certain persons will be

accused of a crime in public and such persons are without the constitutional safeguards to face their accusers. This is much different from grand jury investigations where the proceedings are conducted in secrecy and an accusation made. Thereafter the accused has his day in court with all "due process" safeguards. Under this system one could only fairly exonerate himself from an accusation thus made by demanding and insisting that he be tried by the appropriate authorities on the charge made by such persons against him. Under the rules of the commission, the accused has no real opportunity to explain away the charges made against him. In other words, by the safeguards the plaintiff seeks, he might well use the forum for subjecting the charges against him to a scrutiny that might disprove them or, at least, establish that they were incompatible with innocent conduct. Nor can there be any doubt but that the commission will pass official judgment on individuals whom they have under scrutiny, particularly in view of the specific language in 880.7-A concerning the publicizing of findings and conclusions as to specific individuals.

Stated differently, there is no doubt that, although denominated a fact-finding and investigatory agency, the commission is charged with making *findings* with respect to actual or probable violations of criminal laws and in fact may either file appropriate charges with the authorities (880.7-B) or request the Governor to ask the Attorney General to cause criminal prosecutions to be initiated (880.7-D). It also appears that an accusatory function is involved, and on the basis of the hearings thus far held, that the commission has become in fact a forum for the litigation of individual culpability and that official incriminatory or defamatory judgments on individuals will be a necessary concomitant of the hearings. This is, of course, aggravated by the fact that the commission's

members and employees are immune from suit (880.16) and that the right of rebuttal testimony and subpoena power is largely discretionary with the commission (880.12).

Counsel for petitioner has called to the Court's attention the case of *State v. Open Hearing Investigation* (1964), 245 La. 1059, 162 So. 2d 565. Although this case is not applicable, in my opinion, because it involved a proceeding in the nature of a judicial proceeding, involving a hearing before a judge, this Court finds itself sharing the fears Chief Justice Fournet expressed in that case, and paraphrasing his language:

> However reprehensible the crimes involved are and how unprecedented the conditions are leading to a shutdown of construction work, and however laudable the efforts of the Legislature and the Governor in their zeal to punish the wrongdoers and eliminate the conditions, it is my opinion that the injury that cannot but result from this unauthorized, unwarranted and dangerous procedure will produce damaging and far-reaching results that will far outweigh the good to be derived from such hearings.

Certainly it is my personal feeling that the procedure here at issue can only lead to "effective trial" by executive agencies and legislative committees to the prejudice of the ultimate trial itself and puts in the hands of the executive branch power historically vested in judges, grand juries, district attorneys and local police officials. Effective use of these historical agencies could go far in eliminating any adverse effect this decision might have.

Weighing all of the facts of this case and balancing the respective interests involved as did Justice Frankfurter, it is the opinion of this Court that the statute in question is more closely allied to the proceedings pro-

scribed by the cases cited in *Hannah* than it is to the statute upheld in *Hannah.*

What we have here is more than an agency whose sole purpose of existence "is to find facts which may subsequently be used as the basis for legislative or executive action" (*Hannah*), more than an inquiry "to pursue a legislative policy of fire prevention through the discovery of the origins of fires [rather than adjudicate individual responsibility for the fire]" (*Re Gorban*, 352 U.S. 330, 1 L. ed. 376, 77 S. Ct. 510), and more than a general inquiry into powers before it "not as potential accused but solely as witnesses" (*Anonymous Nos. 6 & 7 v. Baker*, 360 U.S. 287, 3 L. ed. 2d 1234, 79 S. Ct. 1157). Rather, we have here an agency which makes determinations in the nature of adjudications affecting legal rights (*Morgan v. U. S.*, 304 U.S. 1, 82 L. ed. 1129, 58 S. Ct. 773; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 95 L. ed. 817, 71 S. Ct. 624; and, *Greene v. McElroy*, 360 U.S. 474, 3 L. ed. 2d 1377, 79 S. Ct. 1400). Its duty in large part is to find that named individuals are responsible for criminal actions and to *advertise* (publicize) such findings and serve as part of the process of criminal prosecution. (See Justice Frankfurter's concurring opinion, *Hannah*, 4 L. ed. 2d 1307, 1353.)

In view of the foregoing, there is no need to consider whether or not the statute is also unconstitutional as an unlawful delegation of legislative or judicial power to the executive branch of the government.

For the above and foregoing reasons, there will be judgment signed herein making the rule for preliminary injunction absolute, and judgment will be further signed ordering and decreeing that Act Number 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, known and cited as R.S. 23:880.1-880.18 be uncon-

stitutional, null and void, and that defendants, Cecyl Morgan, William Redmann, the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, or their successors in office, and John Julien McKeithen, Governor of Louisiana, be enjoined and restrained from in any manner enforcing, implementing or carrying out the provisions of said act, and that there be further judgment restraining and prohibiting Andrew P. Tugwell from making any further payments or expenditures of funds appropriated by the Legislature by virtue of the provisions of said act.

Baton Rouge, Louisiana, this 5th day of February, 1968.

/s/ FRED A. BLANCHE, JR.
JUDGE, 19TH JUDICIAL
DISTRICT COURT

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Number 124,349, Docket 2

PATRICK G. MARTONE
vs.
CECYL MORGAN, ET AL

JUDGMENT

This matter having been submitted on the rule for preliminary injunction, the Court considering the law to be in favor of plaintiff, for the reasons assigned in the written opinion dated January 5, 1968:

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment herein making the rule for preliminary injunction absolute, and ordering and decreeing that Act Number 2 of the First Extraordinary Session of

the Louisiana Legislature for 1967, known and cited as R.S. 23:880.1-880.18 be unconstitutional, null and void, and that defendants, Cecyl Morgan, William Redmann, the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, or their successors in office, and John Julien McKeithen, Governor of Louisiana, be enjoined and restrained from in any manner enforcing, implementing or carrying out the provisions of said act, and that there be further judgment restraining and prohibiting Andrew P. Tugwell from making any further payments or expenditures of funds appropriated by the Legislature by virtue of the provisions of said act.

JUDGMENT RENDERED January 5, 1968, in Open Court.

JUDGMENT READ AND SIGNED this 9th day of January, 1968, in Open Court.

Filed Jan 9, 1968
/s/ Rosalyn B. Dobbs
Dy. Clerk of Court

/s/ FRED A. BLANCHE, JR.
JUDGE, 19th Judicial District Court
I hereby certify that on this day a notice of the above judgment was mailed by me, with sufficient postage affixed, to:
J. Minos Simon and
Ashton L. Stewarts, Esqs.
Done and signed on Jan. 9, 1968
/s/ Rosalyn B. Dobbs

A TRUE COPY
Jan. 9, 1968
/s/ Roberta D. Cox
Dy. Clerk

APPENDIX D

SUPREME COURT
STATE OF LOUISIANA

NUMBER 49,042

PATRICK G. MARTONE

versus

CECIL MORGAN, WILLIAM REDMANN, ANDREW P. TUGWELL, J. B. LANCASTER, and JOHN JULIEN McKEITHEN

PLAINTIFF'S APPLICATION FOR REHEARING

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana
ATTORNEY FOR PLAINTIFF-APPELLEE

PATRICK G. MARTONE, appearing through undersigned counsel, respectfully moves the court to grant a rehearing in respect to the opinion of this court rendered on February 19, 1968, and finally to reverse that opinion, because of the existence of the following errors, to-wit:

(1) THE COURT FAILED TO INCLUDE IN ITS DECISION NOT ONLY LEGAL ISSUES PRESENTED BY PLAINTIFF BUT THE VERY CORE ISSUE OF PLAINTIFF'S POSITION; THUS, THE COURT FAILED TO ADJUDICATE THE ESSENTIAL, JUSTICIABLE CONTROVERSY PRESENTED BY PLAINTIFF'S LAWSUIT.

(a) The operative core issue of plaintiff's complaint involved the power of the Commission of Inquiry to make

findings as to the guilt or innocence of specific individuals in relation to the alleged existence of crimes. The opinion of the court, however, stops short of any reference to that offensive power residing in the Commission of Inquiry. For example on P. 2 of the opinion in its recitation of the power conferred upon the Commission of Inquiry, the court declared:

> "This power was limited however, the act declaring, '* * * it shall be investigatory and fact finding only * * *', and it was further provided that 'The Commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations;' * * *".

A reading of the offensive statute demonstrates however that the phrase immediately succeeding the last truncated quotation of the statute expresses the consummate power conferred upon the Commission which is the source of the constitutional offense against plaintiff's rights. This phrase reads as follows:

> "However, it may, in its discretion, *include in its findings the conclusions of the Commission as to specific individuals* or as to the general situation, or as to both, and it may make such recommendations for action to the Governor as it deems appropriate * * *."

A reading of the opinion would indicate that no such power exists in the Commission of Inquiry. But this power does exist. Moreover such "findings" of guilt *must* be "publicized". This simply means that the finding of guilt of any person accused by the Commission of having committed a crime must be made a matter of public knowledge by its circulation through the news media. Section 880.7(a). To be sure that such an adjudication of guilt is not lost on the public, such a "finding" must be pre-

ceded by a "public hearing". Section 880.7(a). Thus the only difference between a jury verdict in a criminal case and the verdict of the Commission of Inquiry as to guilt or innocence is that such a finding is not automatically followed the imposition of a sentence of imprisonment. The public airing is the same and the deliberation of both bodies comparable. The same defamatory content and the same public condemnation exist in both. After such an adjudication of guilt, the Chairman of the Commission of Inquiry has the authority to file "appropriate charges with the state and federal authorities having jurisdiction". Needless to say any subsequent prosecution of such a publicly condemned person is perfunctory at best and is the basis upon which to provide the sanctions of imprisonment.

§ (b) In the light of the foregoing omission of the court to consider the core issue involved in plaintiff's application, the further failure of the court to consider plaintiff's specific constitutional attacks is of more than passing significance. Unfortunately the court adopted defendants' interpretation of plaintiff's constitutional attack rather than the specific attacks as verbalized by plaintiff himself, through his counsel. To illustrate on P. 2-3 of the opinion the court says:

> "The principal attack levelled by the plaintiff is that the act denies him due process as guaranteed by Section 2 of Article I of the Louisiana Constitution and the Fourteenth Amendment to the Constitution of the United States, because the powers vested in the Commission are such that, in their investigations and hearings authorized under the act, plaintiff and/or persons similarly situated are denied assistance of counsel, the right of confrontation, the right of cross-examination of witnesses and the right to compulsory process for their witnesses. * * *"

Not only is the foregoing statement identical with defendants' interpretation of plaintiff's attack, but it is given in the same order as defendants' have elected to present them to the court in their brief. Say defendants in their brief at P. 2:

> "The main thrust of the attack on said act is that it denies plaintiff 'due process' as guaranteed by Article 1, Section 2 of the Constitution of Louisiana and the Fourteenth Amendment to the Constitution of the United States, because it is claimed that plaintiff is denied by said act the (a) assistance of counsel, (b) right of confrontation, (c) right of cross-examination of witnesses, and (d) compulsory process for his witnesses."

May we point out what plaintiff himself has to say however about his principal attack? We invite the court to plaintiff's brief at P. 3-4:

> "There is no right to the effective assistance of counsel, no right of confrontation, no right to compulsory process for the attendance of witnesses. There are no effective and meaningful rules of evidence, no meaningful and definable standards of guilt or innocence and no right of appeal. In fact the witness has no right effectively to invoke the immunity of self-crimination. In such a situation the Commission has power to compel one to publicly confess his guilt of criminal law violation by purporting to extend to him immunity from both state and federal prosecution. Section 880.13"

Not only did the court apparently not consider the constitutional effect of investing the Commission of Inquiry to make public findings of guilt of an individual of the commission of a crime, but it has effectively held that no such power rests with the Commission of Inquiry. The court, while acknowledging that the district judge predi-

cated his opinion precisely upon the consideration that such power resided in the Commission of Inquiry, it held that such an opinion in fact did not conform with the "nature of the statute and the purpose of its enactment". To illustrate, on P. 3 of the opinion the court summarized the finding of the district judge, and included in that summary the following quotation of the district judge's opinion:

> "Its duty in large part is to find that named individuals are responsible for criminal actions and to advertise (publicize) such findings and serve as part of the process of criminal prosecution."

Immediately following this quoted excerpt of the district judge's opinion is the following language of this court:

> "This ruling, in our opinion, *does not conform* with the nature of the statute and the purpose for its enactment, for the Labor-Management Commission of Inquiry is not invested with any power to make adjudications affecting legal rights. On the contrary it is, as its provisions expressly set forth, an administrative commission (R.S. 23:880.1) created for the special purpose of investigating and finding facts in relation to violation of existing criminal laws * * * 'affecting in a significant manner labor-management relations in one or more areas of the state * * *' ".

Thus there is a double disclaimer as to the reality of the actual power of the Commission of Inquiry. Twice in this ruling this Court denies that the Commission of Inquiry has the power to make public findings of the guilt of a person as to the commission of a crime, despite the fact that the statute itself expressly so provides. Moreover, not once throughout the entire opinion does the court give any consideration to plaintiff's constitutional attack that "there are no effective and meaningful rules of evidence, no meaningful and definable standards of guilt or innocence and

no right of appeal", and "no right effectively to invoke the immunity of self-crimination".

Furthermore, the fact that the court is content to hold that the due process clause of Article 1, Section 9 of the Constitution of Louisiana applies only in criminal prosecution, is no answer to plaintiff's claim that his right to due process under the Fourteenth Amendment is violated by the state statute in question. If there is a dual standard of due process in Louisiana, one oriented to the Louisiana Constitution and the other to the Fourteenth Amendment to the United States Constitution, the restricted expanse of the Louisiana concept cannot operate to contract the broader and more humane compass of the Fourteenth Amendment to the United States Constitution. It was therefore reversible error for the court to have not adjudicated all of the constitutional issues presented by plaintiff.

(2) THE COURT COMMITTED ERROR IN HOLDING THAT THE COMMISSION OF INQUIRY DID NOT HAVE POWER TO INSTITUTE FORMAL CRIMINAL ACCUSATIONS.

§ (a) At P. 6 of the opinion the court held:

"Reverting again to the claim that the powers vested in the Commission violate the due process provision of Section 2, of Article 1 of our Constitution, we believe that the functions of the Commission, i.e., investigatory and fact finding, are somewhat akin to that of the Grand Jury *lacking, however, the effectiveness of formal accusation*, for the Commission reports merely inform the Legislature, the Governor and other executive offices that a crime has probably been committed. Without action on the part of those officers charged with the duty of prosecuting crime, the Commission's findings amount to naught. It is merely advisory and does not affect constitutional rights."

Respectfully plaintiff points out that this statement by the court is diametrically contrary to the express provision of the statute under consideration. The Commission of Inquiry does not lack the effectiveness of formal accusation. As pointed out in plaintiff's brief at P. 3 thereof, Section 880.7(b) expressly provides as follows:

> "In addition, when directed to do so by the Commission, the *Chairman* shall file appropriate charges with the state and federal authorities having jurisdiction."

Indeed the Commission of Inquiry is comparable to a Grand Jury. The bill of indictment is simply drawn up by the Chairman instead of the District Attorney. This legislative body, functioning as an executive trial agency, does not have to wait upon the pleasure of prosecuting attorneys to institute criminal prosecutions against persons found guilty of criminal law violations. Members of the Commission of Inquiry, functioning through the Chairman, have that unquestioned power. As appropriately observed by the district judge such findings serve as part of the process of criminal prosecution. Thus the statement of court appearing on P. 6-7 of the opinion hereinafter quoted is erroneous, to-wit:

> "However, we know of no basic objection from a constitutional standpoint to an open investigation by an administrative body from whose factual findings accusations of commission of crime may subsequently be charged by the *properly constituted authorities.*"

As pointed out herein, this alleged administrative body does not have to wait on "properly constituted authorities" to file charges against individuals appearing before it or even those not appearing before it. It has the inherent statutory power to do just that itself. In this context

the rationale of the decision in OPEN HEARING INVESTIGATION, 245 La. 1059, 162 So.2d 565, is imminently and inescapably applicable, the disclaimer of the court to the contrary notwithstanding. The criterion established by OPEN HEARING INVESTIGATION was verbalized in these words by this court: (162 So. 2d at P. 567).

> "* * * *If testimony or evidence is adduced* at said hearings *showing the commission by named person of the crime or offense being investigated*, then such persons shall have the right to be heard, may appear with counsel, and shall have the right to testify under oath, recall witnesses for cross-examination and have compulsory process for obtaining witnesses in his favor."

Thus, the triggering mechanism legally sufficient to inveigle the intervention of the court in Louisiana to protect an individual against invasion of his constitutional rights in an open hearing where the object is the determination of the existence of crimes and the identity of persons responsible therefor, depends upon two crucial events or occurrences: (a) that testimony or evidence is adduced at said hearing, and (b) shows the commission by a named person of the crime or offense being investigated. According to OPEN HEARING INVESTIGATION, a decision by the highest court of the State of Louisiana, when these two conditions concur, "then such persons shall have (a) the right to be heard, (b) may appear with counsel, (c) and shall have the right to testify under oath, (d) recall witnesses for cross-examination, and (e) have compulsory process for obtaining witnesses in his favor." Thus in 1964 this was the operative standard of constitutional liberty in Louisiana.

The Commission of Inquiry functions in the exact manner as was the function in OPEN HEARING INVES-

TIGATION. In fact the sole function of the Commission of Inquiry is the same as the sole function of the Open Hearing Investigation. Both bodies sought to develop evidence in a public hearing that would show the commission of crimes and would identify the person who has committed it. Thus the public hearing of both these bodies are indistinguishable in fact and law. This court held that the constitutional strictures enunciated in OPEN HEARING INVESTIGATION applied in that particular case "since it was a judicial proceeding", but did not apply to the instant case for two "cogent reasons". The reasons given by the court are as follows: (P. 7-8 of the opinion)

> "First, the hearings provided for are before an administrative commission created by the Legislature, and the commission's function to investigate and report to various executive and prosecuting officers, and also the Legislature, is purely administrative in nature. Secondly, since the act itself provides the procedural rules to be followed, this court is without authority to strike down those procedures in the absence of a finding that they are unconstitutional."

It is respectfully submitted that these reasons are indeed not cogent at all. The court is looking to the form of the law rather than the substance. As plaintiff pointed out in his brief, P. 8, "a denial of constitutional rights occurring under the auspices of an executive trial agency, where there is no right of appeal, is no less certain or harmful than a denial of such rights occurring under the auspices of a judicial forum, where there is no right of appeal, as was the case in OPEN HEARING INVESTIGATION. In other words, the personality of the executioner does not make the blow which he inflicts less fatal, nor the death of his victim less certain." As plaintiff further remonstrated with the court: "the fact that in the one case such a hearing is conducted before a judge and in the other before

nine Commission members is of no significance in terms of the rights of the individual involved. In other words a procrustean bed is a procrustean bed. The fact that the chopping knife is wielded by a district attorney elected by the people or by nine men appointed by the Governor does not make the legal limbs of the victim less likely to be chopped off. It is the chopping which offends and not the forum before which the legal slaughter occurs nor the classification of the dignitary who presides over the operation". Therefore if the procedures provided for by the Commission of Inquiry do not conform to the constitutional standards enunciated and defined by this court in OPEN HEARING INVESTIGATION, where the object of the hearing is identical, then of necessity this court not only has the authority, but the duty to strike down such inadequate procedures as unconstitutional.

(3) THE COURT ERRED IN HOLDING THAT THE PURPOSE OF THE LEGISLATION WAS TO ENABLE THE LEGISLATURE TO ENACT NEW LAWS.

(a) The court held that the statute in question merely established an "administrative body" which, "merely finds facts and recommends", (P. 4) and that it is "merely an adjunct of the executive and legislative departments reporting, as it does, its findings of facts which may serve these departments with data from which new laws may be enacted * * *". (P. 5) Such activities on the part of the Commission of Inquiry are expressly proscribed by the very provisions of the statute under consideration. Section 880.6(b) provides:

> "The Commission shall have *no power*, authority or jurisdiction to investigate, hold hearings, or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of labor problems or disputes * * *."

This executive trial agency therefore is not a benign, fact finding agency of either the executive or legislative departments of government. It is precisely what it purports to be, namely, an executive trial agency without authority to make recommendations as to the enactment of new laws.

(4) THE COURT ERRED IN HOLDING THAT THE TEMPORARY ASSIGNMENT OF INVESTIGATORS OF THE COMMISSION OF INQUIRY TO THE STATE POLICE IS NOT CONTRARY TO THE PROVISIONS OF ARTICLE 14, SECTION 15 OF THE LOUISIANA CONSTITUTION. SUCH HOLDING AMOUNTS TO JUDICIAL LEGISLATURE.

(a) The court dismisses this contention in one sentence reading in its entirety as follows: (Opinion P. 10)

> "The investigators of the Commission do not become members of the State Police, when temporarily assigned upon the request of the Governor, but are only given the power and authority of members of the State Police while acting under the assignment."

To appreciate the significance of the error of such a ruling, this pithy ruling must be considered contextually with the actual provisions of the statute under consideration, namely, Section 880.6(c):

> "Upon the request of the Governor, the Commission may assign all or part of its investigatory forces to the State Police to assist them in investigating *any* violations or probable violations of law and in *apprehending all persons engaged in violation of law.* During *such assignment* such investigators *shall* be under the supervision of the Director of the Department of Public Safety and have *all the power* and authority of other members of the State Police."

It is difficult to understand how it can be concluded that such investigators do not become part or members of the State Police during that assignment, when their function is identical as any other members of the State Police and when their superior as to their function is the same as other members of the State Police. Certainly they are members in fact of the State Police. It is the de facto membership that offends against the constitutional proscription of Article 14, Section 15. This constitutional proscription does not authorize the Governor or any executive agency to institute any person as a member of the State Police permanently or temporarily. A temporary violation of the constitution is as much of a violation of it as a permanent violation is. The effect of the decision of this court is that the Constitution of the State of Louisiana may be temporarily violated by the Governor or an executive agency with utter immunity. This is indeed introducing a dangerous doctrine. The people of Louisiana are the ones who determine what their Constitution shall contain. Nowhere can it be found in the provisions of Article 14, Section 15, that the people of Louisiana have agreed that Governor McKeithen or his Commission of Inquiry enjoy the prerogative of violating their Constitution "temporarily". The danger of such a doctrine lies in the definition of the word "temporary". The court may take judicial notice of the fact that some investigators of the Commission of Inquiry have been functioning as members of the State Police for approximately eight months now. This court may take judicial notice of the fact that in that capacity they have conducted gambling raids throughout the State of Louisiana and also have arrested a few prostitutes. The court may take judicial notice of the further fact that they have investigated Sheriff Jessel Ourso of Iberville Parish, Louisiana in connection with the fulfillment of Governor McKeithen's desire to bring to naught the

will of the electorate of Iberville Parish, Louisiana by ousting Sheriff Ourso from office. If the court is to accept at face value the public statements of Governor McKeithen, then it is fair to say that the "temporary" assignment of the investigators of the Commission of Inquiry to the State Police will endure for as long as McKeithen remains Governor of the State of Louisiana. This could be forever. It is submitted therefore that it is no answer to the unarguable proposition that the assignment of investigators of the Commission of Inquiry to the Louisiana State Police and the installation of them as members thereof violate the proscription of Article 14, Section 15, to say that such a violation is tolerable because it is only temporary in nature.

(5) IT WAS ERROR OF THE COURT TO DISMISS PLAINTIFF'S LAWSUIT, WHEN THE ONLY MATTER BEFORE THE COURT WAS THE ISSUE OF A PRELIMINARY INJUNCTION.

(a) This case is before the court in connection with the granting of a preliminary injunction. Thus there is before the court only an interlocutory judgment. Despite this the court dismissed plaintiff's lawsuit as though the merits were before it. There is no sanction of law for such an adjudication and therefore it was error for the court to dismiss plaintiff's lawsuit.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana
ATTORNEY FOR PLAINTIFF-
APPELLEE

/s/ J. MINOS SIMON
ATTORNEY FOR PLAINTIFF-
APPELLEE

CERTIFICATE

I hereby certify that a copy of the foregoing application for rehearing has been supplied to attorneys for defendants:

Mr. Ashton L. Stewart, Special Assistant
Attorney General, State of Louisiana
604 Union Federal Building
Baton Rouge, Louisiana 70801

And

Mr. Wesley Wirtz, Assistant Attorney General,
State of Louisiana
604 W. Roosevelt Street
Baton Rouge, Louisiana

Lafayette, Louisiana, this 1st day of March, 1968.

/s/ J. MINOS SIMON
J. MINOS SIMON

SWORN TO AND SUBSCRIBED before me on this 1st day of March, 1968, at Lafayette, Louisiana.

/s/ RONALD E. DAUTERIVE
Notary Public